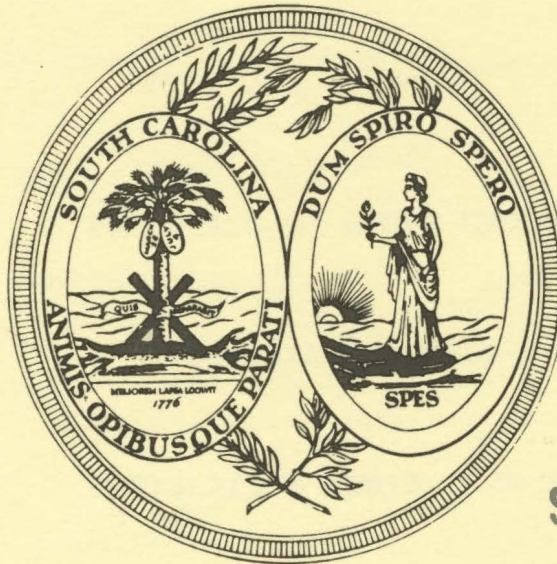


A3Au255
8.W56
Copy 1

South Carolina General Assembly



S. C. STATE LIBRARY

SEP 19 1986

STATE DOCUMENTS

Legislative Audit Council



The State of South Carolina
General Assembly
Legislative Audit Council
A Management and Performance
Review of the State Workers'
Compensation Fund
September 18, 1986

THE STATE OF SOUTH CAROLINA

GENERAL ASSEMBLY

LEGISLATIVE AUDIT COUNCIL

A MANAGEMENT AND PERFORMANCE REVIEW

OF THE STATE WORKERS' COMPENSATION FUND

TABLE OF CONTENTS

	<u>Page</u>
<u>MAJOR FINDING: ADMINISTRATION</u>	1
 <u>CHAPTER I - BACKGROUND AND ORGANIZATION</u>	 4
Introduction and History.....	4
Organization.....	5
Revenues and Expenditures.....	8
 <u>CHAPTER II - PROGRAM MANAGEMENT</u>	 9
Monitoring of Fund Reserves.....	9
Claim Reserving Practices.....	11
Reinsurance.....	12
Premiums.....	14
Application of Premium Rates.....	16
Application of Loss Experience Rating Formula.....	17
Automation of Loss Experience Rating Formula.....	19
Field Audits.....	20
Method for Estimating Premiums.....	22
Final Premium Billing.....	23
Handling of Employee Claims.....	25
Lawyer/Legislators Representing Clients Against Fund...	27
Payment of Temporary Total Disability Benefits.....	32
Payment of Medical Bills.....	34
Monitoring of Temporary Total Disability Cases.....	36
Claims Investigations.....	38
Second Injury Controls.....	40
Determination of Average Weekly Wage.....	42
 <u>CHAPTER III - ADMINISTRATION</u>	 44
Policies and Procedures.....	44
Information Resource Management.....	45
Records Management.....	50
Confidentiality of Claimant Records.....	52
Procurement of Claimant Services.....	53
Purchase and Control of Medical Equipment.....	54
Hiring and Promoting Practices.....	56
Monitoring of Special Investigator Activities.....	57
Foreign Travel.....	59
Use of Private Vocational Rehabilitation Providers.....	59
Management of Participants' Loss Control.....	61

TABLE OF CONTENTS (CONTINUED)

	<u>Page</u>
<u>CHAPTER IV - SPECIAL PROGRAMS</u>	63
Administration of the Insolvency Fund.....	63
Funding the Crime Victims' Fund.....	66
Statutory Definition of Victim.....	68
Victim/Witness Program.....	70
 <u>APPENDICES</u>	 72
A - Glossary.....	73
B - Agency Comments.....	76

MAJOR FINDING: ADMINISTRATION

During the course of the audit, the Legislative Audit Council found numerous examples of poor management of the State Workers' Compensation Fund. An overall question is raised as to the solvency of the State Fund. The magnitude of this and other problems indicates that immediate and significant improvements need to be made at the State Fund. The Audit Council identified problems in all areas of agency operations. The following is a summary of some of these problems:

- The State Fund is not adequately monitoring its reserves to ensure its solvency.
- Claims are not reserved properly to ensure funding is available to cover participant losses.
- The State Fund has violated §42-7-70 of the South Carolina Code of Laws and is arbitrarily reducing premiums.
- The State Fund is not properly applying the National Council on Compensation Insurance (NCCI) formula for determining the premiums.
- Billing practices are not timely and have a detrimental effect on participants.

Efficient claims processing and the settlement of cases are also crucial to the operation of the State Fund. However, the Audit Council found that the State Fund has not complied with the law in some areas, and that lack of management initiative and poor controls have caused numerous problems. These include:

- Special handling of State Fund/Workers' Compensation Commission employees cases raises a question of bias.
- There is a question of conflict of interest where lawyer/legislators represent claimants against the State Fund.
- Untimely payment of compensation and medical bills exists.

- Overpayments of temporary total benefits were found.

The general administration of the State Fund is also weak. Since all operations are funded by participants' premiums, these weaknesses could also affect the overall financial structure of the State Fund. Problems noted here include:

- Inadequate information resource management.
- Violations of the State Procurement Code.
- The hiring and promoting of unqualified personnel.
- The State Fund uses private rather than State vocational rehabilitation providers at an unnecessary cost to participants.
- The State Fund does not monitor effectively its loss control program to help reduce participants' losses.

Finally, special programs operated by the State Fund need changes. Some problems are summarized below:

- There is weak administration of the Insolvency Fund and a question of State Fund's compliance with the law.
- Crime Victims' programs need modification in order to ensure the intent of the Legislature is met.

Major Recommendation

The Workers' Compensation Fund is in need of an overall reorganization. Some alternatives that should be considered are:

- A governing board could be established to set policy for the operation of the State Fund. This board could be given the authority to promulgate Regulations for the implementation of the law. The Director of the State Fund would be responsible to the board for the day-to-day operations. Members of the board could include one person from the insurance industry, an attorney, a doctor and three members from the State at large.
- The State's workers' compensation insurance for all State agencies could be put out for bid to ensure the

best service at the lowest cost. This bid should include the State Highway Department.

- Section 38-5-850 of the South Carolina Code of Laws could be amended to include the examination of affairs and methods of the State Workers' Compensation Fund by the Chief Insurance Commissioner.
- Any examination of the State Fund should include a review of interest earned on the Fund as an additional revenue source.
- The South Carolina Department of Insurance could assume regulatory authority over rates and service.
- The State Workers' Compensation Fund should establish a plan for corrective action. Within one year, a progress report should be submitted to the Governor and the Legislative Audit Council.

CHAPTER I
BACKGROUND AND ORGANIZATION

Introduction and History

The State Workers' Compensation Fund (State Fund) was empowered by temporary acts between 1943 and 1947. In 1947, a permanent special fund designated as the Workmen's Compensation Fund was established. This Fund was administered by the South Carolina Industrial Commission (now the South Carolina Workers' Compensation Commission). In 1974, Act 1049 established the State Workers' Compensation Fund as a separate State agency to insure workers against accidents "arising out of and during the course of employment."

The apparent intent of the Legislature in setting up the State Fund is to keep expenses to a minimum for governmental entities and, therefore, the taxpayer, while providing protection to the worker. The State Fund sets rates and minimum premiums for its participants, and processes claims for workers' compensation benefits. All State agencies, except the South Carolina Highway Department, are mandated to participate in the State Fund. Other political entities, such as municipalities and counties, may participate if they choose. For 1985, the State Fund reported approximately 400 participants excluding State agencies. Between April 1983 and January 1986, 193 participants left the State Fund. Over this time period, four participants have been reinstated and an additional 53 participants have joined the State Fund. For FY 84-85, the State Fund balance was approximately \$6 million.

In 1982, responsibility for the State Workers' Compensation Insolvency Fund (Insolvency Fund) was added to the agency. This Fund is set up to ensure payment of awards of workers' compensation benefits to employees of an insolvent employer without the necessary coverage. Revenues for this Fund are collected by the Department of Insurance

and South Carolina Workers' Compensation Commission from taxes on insurance companies and self-insurers, respectively. The State Workers' Compensation Insolvency Fund is required to maintain a funding level of not less than \$200,000.

In 1982, the South Carolina Crime Victims' Compensation Fund, which has been funded by fees and fines collected in civil and magistrate courts, was established to provide benefits for victims of crime who suffer direct physical injury or death as a result of the crime. Additionally, the Victim/Witness Assistance Program, which was established in 1984, provides assistance to victims who suffer direct or threatened physical, emotional or financial harm as the result of a crime or attempted crime. Services may also extend to families. This program coordinates with State agencies, local agencies and groups involved in victim/witness and domestic violence assistance. Collections reported for FY 84-85 were \$186,036. Finally, a State appropriation of \$110,000 annually is provided to licensed health care facilities for the examination of rape victims.

Organization

The State Fund is administered by a Director appointed by the Governor for a six-year term with the advice and consent of the Senate. The Director's salary is set at 85% of the salary paid to the Workers' Compensation Commissioners. On September 2, 1986, a new Acting Director was appointed. The State Fund has 39 staff members.

The Director for the State Fund is also the administrator for the Insolvency Fund and the Crime Victims' Fund. For the latter, the Director reports to an advisory board. The State Fund and Insolvency Fund have no board or commission and are, by statute, solely under the management of the agency Director. The Insolvency Fund has no

designated staff; the Crime Victims' Fund has nine employees (see Table 1).

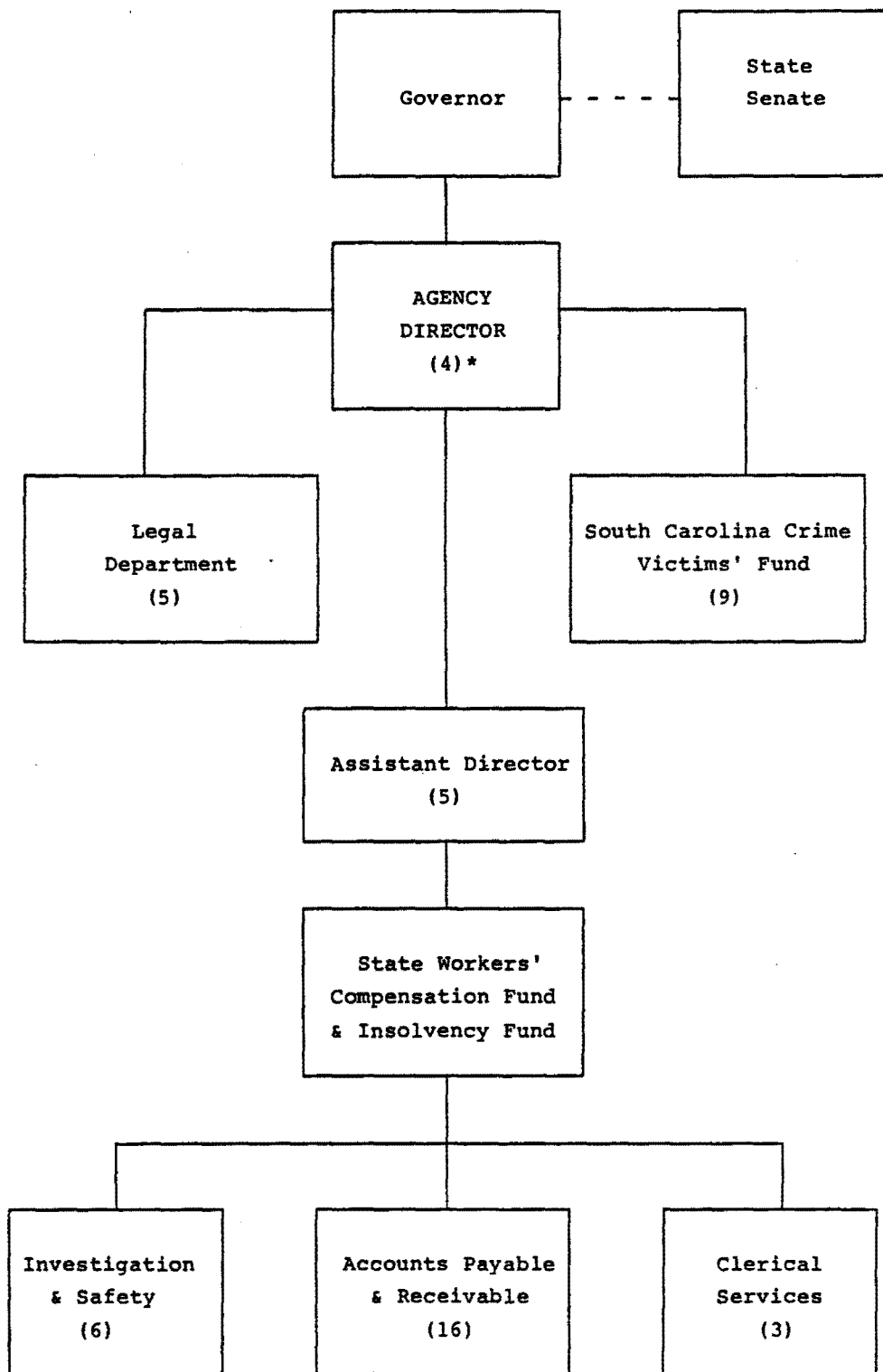
The State Fund collects premiums from its participants to cover the expenses of claims incurred and to cover costs of operations. Funds are deposited with the State Treasurer and payments are issued by the Comptroller General. As shown in Table 2, from FY 80-81 to FY 84-85, State Fund personal services and operating expenditures have increased 52% from \$594,203 to \$904,416. During this same time period, collection from premiums increased by 19% from \$7,864,176 to \$9,363,434, while disbursements for claims increased 45% from \$7,530,596 to \$10,885,627.

This report is an in-depth review of the State Fund's workers' compensation activities. This is the first of a two-part examination of the South Carolina Workers' Compensation Program, which includes both an audit of the State Workers' Compensation Fund and an audit of the South Carolina Workers' Compensation Commission.

Additional programs operated under the State Fund's purview were peripherally reviewed since they are a part of agency management functions. Some general recommendations were made in the areas of Crime Victims' programs.

TABLE 1

STATE WORKERS' COMPENSATION FUND



*Number of personnel if more than one.

Source: State Workers' Compensation Fund, July 1986.

TABLE 2

STATE WORKERS' COMPENSATION FUND

SOURCE OF REVENUES AND EXPENDITURES FY 80-81 THROUGH FY 84-85

Revenues	FY 80-81	FY 81-82	FY 82-83	FY 83-84	FY 84-85
Regular Appropriations	\$638,282	-	-	-	\$ 110,000
Lapsed	(23,976)	-	-	-	(81,710)
Supplemental Appropriation Acts	-	-	-	-	4,453
Carried Forward	-	-	-	-	(4,453)
Total Appropriations	\$614,306	-	-	-	\$ 28,290
Other Funds - Receipts					
Workers' Compensation Fund	\$ 54,904	\$750,603	\$247,240	\$ 954,360	\$ 578,643
Premium Fund for State Agencies	-	-	582,425	-	473,435
Crime Victims' Fund	-	-	47,398	131,618	186,036
Total Other Funds	\$ 54,904	\$750,603	\$877,063	\$1,085,978	\$1,238,114
TOTAL Funds	\$669,210	\$750,603	\$877,063	\$1,085,978	\$1,266,404
Expenditures					
Operating Expenses - State Fund					
Office Equipment Repair	\$ 1,318	\$ 2,030	\$ 2,105	\$ 2,025	\$ 2,943
Photocopying Equipment Repair	546	459	873	728	731
Freight, Express Delivery	44	45	2,202	53	82
Telephone and Telegraph	10,134	14,683	28,334	22,818	16,419
In-Service Training, State	194	-	-	-	-
Data Processing Services, State	14,100	15,323	17,839	96,305	91,407
Printing, State	1,833	2,310	2,989	3,444	4,109
Printing, Commercial	-	-	-	1,105	1,192
Printing - Public/Annual Reports	94	57	42	41	745
Registration Fees	500	3,275	350	2,005	2,582
In-Service Training, Nonstate	578	-	-	-	-
Office Supplies	4,089	6,510	2,151	2,643	2,516
Photocopy Supplies	2,858	2,872	3,437	1,527	803
Data Processing Supplies	2,075	3,356	2,266	3,064	3,839
Motor Vehicle Supplies	-	-	-	-	17
Printing Supplies	1,125	978	6,443	-	-
Postage	8,889	10,953	15,451	14,073	8,966
Photographic & Audio Visual Supplies	-	24	22	47	116
Rental - Office Equipment	298	339	418	434	356
Rental - Photocopy Equipment	-	-	353	-	-
Rental - Data Processing Equipment	9,772	9,753	10,207	8,113	8,199
Rental - State-Owned Real Property	27,212	28,852	20,966	-	-
Rental - Nonstate-Owned Property	-	-	21,533	58,011	61,098
Insurance, State	-	-	522	616	715
Insurance, Nonstate	273	273	273	273	273
Travel	36,222	35,653	40,280	40,986	47,105
Office Equipment	12,869	1,975	1,588	1,830	2,054
Library Books, Maps, Films	967	493	678	726	1,313
Printing, Binding, Ad. Commercial	716	108	676	-	-
Legal Services	19	-	63	70	25
General Repair Services	2,111	2,269	2,536	3,137	3,306
Other Supplies	67	37	-	-	-
Data Processing Equipment	363	-	-	-	-
Photocopy Equipment	-	-	6,070	-	-
Printing, Binding Annual Report	-	-	-	-	116
Other Contractual Services	-	-	-	-	16
Educational	-	-	-	-	4
Dues and Membership	-	-	-	-	90
Other	-	10	-	5	-
Total Operating Expenses - State Fund	\$139,266	\$142,637	\$190,667	\$ 264,079	\$ 261,137
Total Personnel - State Fund	\$454,937	\$517,372	\$541,058	\$ 582,050	\$ 643,279
Operating Expenses - Crime Victims' Fund					
Contractual Services	-	-	\$ 1,733	\$ 9,699	\$ 9,407
Printing	-	-	3,421	-	2,319
Supplies	-	-	584	4,594	5,832
Postage	-	-	549	-	9,537
Fixed Charges and Contributions	-	-	-	5,773	1,038
Dues and Memberships	-	-	275	-	275
Travel	-	-	3,773	10,288	19,371
Equipment	-	-	3,921	6,260	3,613
Library Books, Maps, Films	-	-	-	38	32
Total Operating Expenses - Crime Victims'	-	-	\$ 14,256	\$ 36,652	\$ 51,424
Total Personnel - Crime Victims' Fund	-	-	\$ 28,196	\$ 80,283	\$ 134,612
Total Special Items: Victims' Right	-	-	-	-	\$ 28,290
TOTAL Employee Benefits	\$ 75,007	\$ 90,594	\$102,886	\$ 122,914	\$ 147,661
TOTAL Expenditures - Workers' Comp. Fund	\$669,210	\$750,603	\$877,063	\$1,085,978	\$1,266,404

Source: South Carolina State Budgets, State Budget and Control Board.

CHAPTER II

PROGRAM MANAGEMENT

The following chapter outlines problems the Audit Council identified in the program areas of insurance and claims management. An overall question is raised of the solvency of the State Fund. First, problems are identified in the insurance area with the monitoring of reserves and procedures used to reserve funds to pay claims. Second, there has been no study of reinsurance needs. Additionally, there are problems in setting premiums for participants. Finally, problems are noted in estimating and billing premiums.

Problems in claims management were found in the handling of employee claims and other settlements by the State Fund. Benefit payments are not properly determined and are not timely in some cases. Also, claims investigations are not effective.

These problems all have a significant effect on the ability of the State Fund to cover claims payments and remain solvent.

Monitoring and Insuring of State Fund Reserves

Monitoring of Fund Reserves

The State Fund is not adequately monitoring its claims reserves (funds set aside to pay claims). This problem is further complicated by the State Fund's reserving procedures (see p. 11). Therefore, State Fund officials do not know how much of the loss reserves (amount available to pay future claims) will be consumed by open claims from previous years. If the State Fund is underreserved, its balance to pay future claims could be depleted, leaving it insolvent. However, a determination of the State Fund's solvency would require study by an independent professional actuarial firm.

According to the State Department of Insurance, to assess whether reserving policies are adequate, a prospective study of claims should be done of the amount of funds reserved versus the amount of funds disbursed or obligated. If a trend develops that shows not enough funds are being set aside to pay the anticipated cost of claims, then an adjustment must be made to increase the set-aside amount.

The State Fund has not developed the capability to compare the amount of claims payments made on losses incurred in a given year to the amount reserved for the payment of these claims. It has not ensured that proper information is available to evaluate if enough funds are being set aside to cover its losses. State Fund officials have not evaluated claims reserves based on their ability to anticipate the future cost of claims. The State Fund's reserving practice is not considered to be a standard actuarial practice, and could produce a substantial shortfall in funds available for future claim payments. Also, a State Fund official stated that reserves for unearned premiums have not been established for the unexpired portions of policies still in effect. According to a South Carolina Department of Insurance official, this could substantially magnify the possible shortfall in reserves.

Without an adequate system to monitor reserves, State Fund officials cannot ensure that the State Fund is solvent. The Audit Council analyzed reserves and annual premiums for two other State Workers' Compensation Funds. By contrast, the State Fund's reserves are approximately three-fourths of its annual premium, whereas the two other State Fund's reserves are approximately three and one-half times their annual premiums.

Claim Reserving Practices

The State Fund has not set aside adequate funds to pay some claims. Temporary total disability claims are only reserved for eight weeks at a time; the full anticipated cost of the claim should be reserved, which could be as long as 500 weeks. The South Carolina Workers' Compensation Law allows for maximum benefits of 500 weeks. As a result, the State Fund's liabilities could be significantly understated and premiums it charges to its participants could be too low. Additionally, if inadequate reserves are confirmed, the financial structure of the State Fund would be adversely affected, which could leave its solvency in question (see p. 9).

As stated, participants pay premiums to fund claim payments. This means sufficient funds should be set aside (reserved) to make the required payments (current and future) to injured workers. According to the Department of Insurance, the anticipated benefits, both compensation for lost wages and medical, that will be paid to an individual must be calculated with reasonable accuracy. The amount set aside must be adequate to cover the present value of the entire anticipated cost of claims.

For example, for one claim analyzed by the Audit Council, the injured party was being compensated at \$169 per week for being unable to work. According to a State Fund official, the State Fund updates the amount of funds set aside for this type of claim benefit every eight weeks. Funds for the total anticipated cost of the claim are not reserved. Based on this information, the reserve funds set aside for this claim would have been updated by approximately \$1,350 every eight weeks from September 1982 to June 1986, when the claim was settled and closed for a total payment of approximately \$84,000. Because this claim's liabilities were established for only eight weeks at a time, the Audit Council calculates the liability for this claim was understated and funds were underreserved by

approximately \$81,000 in 1982, \$72,000 in 1983, \$63,000 in 1984, and \$54,000 in 1985.

Data used to determine premiums does not reflect the actual liabilities and costs of claims in a given year. By setting reserves at a lower level than can be anticipated to pay future claims, a question is raised as to whether the future solvency of the State Fund is ensured.

Reinsurance

The State Fund has not adequately studied the need for reinsurance to cover large or catastrophic losses. Reinsurance is coverage by which one insurer insures with one or more other insurers all or a portion of the risk it has assumed under its contracts. State Fund officials have never consulted with an independent actuary to evaluate the State Fund's financial condition to determine if reinsurance is needed. Without some form of reinsurance, the State Fund could be exposing itself to the potential for losses that could make it insolvent and dependent upon General Fund revenues for support.

In January 1985, a State Fund official stated that reinsurance should be researched further and possibly purchased. However, after receiving one price quote, State Fund officials decided that the the cost was prohibitive. If large or catastrophic losses did deplete the State Fund, officials told the Audit Council that the General Fund should accept liability for the losses since all interest revenue earned from the State Workers' Compensation Fund is retained by the General Fund.

Section 42-7-100 of the South Carolina Code of Laws authorizes the State Fund, with approval of the State Budget and Control Board, to reinsure any portion of its insurance liability it deems advantageous. According to a Department of Insurance official, a proper decision as to whether reinsurance is necessary should only be made after an evaluation by an independent actuary. The Audit Council

contacted two other southeastern states with agencies similar to the South Carolina State Workers' Compensation Fund. Both have contracted with independent actuarial firms to determine a need for reinsurance coverage.

Considering the possible significant weaknesses in the State Fund's reserving practices (see pp. 9, 11) and premium pricing (see pp. 16, 17) noted in this report, its need for reinsurance should be studied in depth. The State Fund could be placing an excessive burden on South Carolina taxpayers in the event that large or catastrophic losses deplete the State Fund, requiring General Fund revenues to cover the losses.

RECOMMENDATIONS

AN INDEPENDENT ACTUARIAL FIRM SHOULD BE CONTRACTED IMMEDIATELY TO EVALUATE THE STATE FUND'S MANAGEMENT, RESERVES, AND PREMIUM PRICING POLICIES.

THE STATE BUDGET AND CONTROL BOARD SHOULD CONTRACT WITH AN INDEPENDENT ACTUARY TO EVALUATE THE STATE FUND'S NEED FOR REINSURANCE.

IF REINSURANCE IS FOUND TO BE NECESSARY, ALTERNATIVES TO A LEGISLATIVE APPROPRIATION COULD BE:

1. ALLOW THE INTEREST EARNED ON THE STATE FUND TO BE USED TO COVER THE COST OF REINSURANCE.
2. RESTRUCTURE THE PREMIUMS CHARGED TO PARTICIPANTS TO COVER THE COST OF REINSURANCE.

Premium Determination

Standards for premium setting are issued by the National Council on Compensation Insurance (NCCI). The State Fund has adopted these standards.

Participants annually submit payroll information upon which rates are applied. Additionally, calculations for loss experience are used in the final determination of the premium. Both rates and loss experience are standardized by the NCCI. The following formula is used by the State Fund in developing a premium:

$$\text{Rate} \times \text{Payroll} \times \text{Experience Rating Calculation} = \text{Modified Premium}$$

The modified premium is adjusted down by 40% to account for theoretical savings attributed to a self-insured versus private carrier.

A number of problems are identified in the area of premium determination. The following findings address: arbitrary reduction of premiums; incorrect application of premium rates and other factors used in premium determination; and central problems in data automation and payroll audit areas.

All of the above areas have a direct effect on revenues to the State Fund and, therefore, the ability of the State Fund to cover claims payments and remain solvent.

Premiums

The State Fund has arbitrarily reduced premiums for select participants in order to maintain these accounts. State Fund officials have discriminated against other participants by reducing some select participants' premiums through arbitrary application of rating formulas or negotiations. Premium reductions by the State Fund have resulted in the loss of approximately \$200,000 in annual premiums not billed for the six participants reviewed by the Audit Council.

The Audit Council reviewed 1984 premium calculations for six of the State Fund's ten largest participants. Five were arbitrarily given a lower loss experience rating than required by the experience rating formula. This formula is a part of the determination used to establish a premium amount for a participant. This reduction procedure resulted in a total premium reduction for 1984 of approximately \$106,000 for these five participants.

In the sixth case, the Audit Council found that State Fund officials negotiated a premium for a participant. The participant was given a guaranteed premium for two years of \$56,000 per year less than the previous year's estimated premium. However, data supplied by the participant indicated that the guaranteed premium for the two years was approximately \$100,000 less than the participant's losses in 1984. Therefore, the premium charged this participant was approximately \$100,000 less than that which should have been charged.

In an additional case reviewed, the participant's experience rating was intentionally lowered by the State Fund for 1984 by approximately \$17,500. However, in November 1985, a State Fund official was notified that this participant would be leaving the State Fund. In an attempt to recoup the lowered premium to cover outstanding claims, a State Fund official notified the employer that a "mistake" was made in calculating the premium, and the \$17,500 would have to be paid. The State Fund also rebilled the participant for approximately \$3,700 that had already been received from the participant. When the participant requested the State Fund official to justify this action, the State Fund responded that a serious injury sustained by one of the participant's employees had a decided effect on the participant's premium. The State Fund did not indicate to the participant that the loss experience rating had been intentionally lowered.

Section 42-7-70 of the South Carolina Code of Laws requires that premiums paid by employers insured in the State Fund to be "adequate and not unfairly discriminatory." The State Fund has adopted an experience rating formula supported by the South Carolina Department of Insurance and is considered the standard for the industry for calculating premiums.

According to State Fund officials, some employers are given lower premiums in order to maintain their business. Additionally, officials have stated that the State Fund cannot afford to pay the outstanding claims of employers that have left the State Fund and are no longer paying premiums. However, according to South Carolina Department of Insurance officials, if appropriate insurance principles had been applied, there would have been adequate funds available to pay any outstanding claims of employers that have left the State Fund.

By cutting a participant's loss experience rating to give a favorable premium, the premium being charged does not represent the participant's own potential for incurring claims. There is no incentive for participants to keep claims costs down; other participants are subsidizing select participants' claims. Finally, the State Fund's solvency could be in jeopardy due to inadequate premiums being collected from these participants to cover future claims costs. As a result, participants in the State Fund and/or the taxpayers of South Carolina pay for inadequacy.

Application of Premium Rates

The State Fund has incorrectly applied premium rates in determining premium billing for its participants. From at least 1980 through 1984, the agency used the previous year's workers' compensation rates instead of the current year's in calculating premiums for its participants. As a result, the State Fund has lagged a year behind in charging workers' compensation premiums to its participants.

Workers' compensation premium rates are set by the National Council on Compensation Insurance (NCCI). According to the State Department of Insurance, these rates should be applied as of the date the rates go into effect and should not lag a year behind.

Management has not established policies and procedures for the proper application of workers' compensation rates. Although NCCI standards were adopted, management did not begin using current year rate figures until 1985 when informed by the State Department of Insurance of the proper application of these rates.

The Audit Council analyzed workers' compensation rates from 1980 through 1984 as applied by the State Fund. According to the South Carolina Department of Insurance, premium rate increases (decreases) have not been adjusted properly. The State Fund lost approximately \$2.1 million in premiums and interest as a result of using the previous year's rates to calculate premiums.

Application of Loss Experience Rating Formula

The State Fund has not applied the experience rating formula according to the National Council on Compensation Insurance (NCCI) standards. However, the State Fund has adopted the NCCI formula as a refinement in the premium determination process.

The experience rating formula compares the experience of individual participants with the average participant. The differences are reflected by an experience modification, based on individual participant loss records, which may increase or decrease premiums. The State Fund has not used the recommended experience factors or experience period in its application of the formula.

Experience Factors

A review of records since 1982, shows the State Fund has not used the recommended loss experience factors in its

loss experience rating calculations. As a result, the State Fund could be charging a higher or lower premium to its participants than required by the formula.

The Audit Council recomputed the loss experience rating for seven of the approximately 400 State Fund participants (excluding State agencies). State Fund officials could not document which year's loss experience rating factors (updated annually by the NCCI) were being used in the formula. However, the Audit Council has determined the State Fund has continued to use the 1981 factors in calculating premiums.

The magnitude of the effect of these errors could be determined only by professional analysis of an independent actuarial firm. However, according to a State Department of Insurance official, the effect could have a significant impact on premiums.

Experience Period

The State Fund also has not used the recommended experience period in its loss experience rating calculations (modifications) causing estimated premiums to be unreliable.

The NCCI recommends that the experience period consist of three completed years of loss experience ending one year prior to the beginning of the new policy year. Also, the loss experience modification should be calculated at least three months prior to the beginning of the policy year. For example, in a policy year effective from January 1, 1984 to December 31, 1984, the experience period would contain loss experience data from policies effective January 1, 1980 - 1982. The loss experience modification should be calculated by at least October 1, 1983. The State Fund did not calculate the participant's loss experience modification until approximately April 1, 1985, and used only loss experience data for two years, 1982 and 1983.

The State Fund uses two, instead of three, years of participants' loss data and calculates the experience

modifier approximately 15 months after, instead of three months prior to, the current policy year. As a result, premiums fluctuate more from year to year, and adjustments to estimated premiums are more unpredictable. This, coupled with the fact that the State Fund has not computed the loss experience modifier before estimating annual premiums (see p. 22), could lead to significant adjustments requiring additional premium from the participant.

Automation of Loss Experience Rating Formula

The State Fund's automation of the loss experience rating formula is not adequate. Data entered into the system is not verified by the State Fund before being processed. Also, loss experience data for some participants will not be accepted by the system. Therefore, loss experience rating calculations could result in participants being charged an incorrect premium.

The loss experience rating formula was developed by the NCCI as a refinement in the premium determination process. It produces a net premium cost, using previous years of participant loss information, and is the best indicator of the participant's own potential for incurring claims. The State Fund automated the experience rating formula in 1985 for calculation of the 1984 premiums.

The Audit Council recomputed the experience rating for seven of approximately 400 participants in the State Fund during 1984. Inaccurate data was input and processed for two of the seven participants and loss experience data was not accepted by the system for four of the participants. The Audit Council was unable, within the time frame of this audit, to compute the extent of effect of these problems with automation of the loss experience formula.

Proper computer controls require that data be verified before being processed. All computer programs should be tested thoroughly and accepted by the user before being put into production to ensure that data is processed accurately.

State Fund officials stated they were unaware that inaccurate data was being processed. Additionally, the State Fund could not document that the computer program was tested before implementation. Problems that have been noted with the program, such as situations where loss experience data for certain employers is not accepted, cannot be corrected until a new program can be written (see p. 45). The State Fund has continued to run the 1985 loss experience rating calculations, knowing that the program's calculations are incorrect.

Field Audits

The State Fund has not performed an adequate number of field audits of its participants. Most payroll information submitted by participants and used in premium calculations is not audited by the State Fund to verify its accuracy.

According to State Fund records, an average of 24% of the participants have been audited annually from 1981 to 1985. State Fund officials stated that current staffing levels and workloads have prohibited them from doing more field audits.

Good accounting practices require that internal controls are in place to ensure that transactions are valid. Field audits of the State Fund's participants include on-site verification of payroll amounts and their proper inclusion in job classification categories. Two other workers' compensation insurers contacted by the Audit Council stated that all of their participants are audited by independent firms annually to certify information submitted before premiums are calculated.

Unless field audits are performed for more participants, State Fund officials cannot ensure that information used in premium calculations is correct. Past audits have uncovered instances of participants' understating and not classifying payrolls properly. For example, one field auditor found a participant

underestimated payroll by approximately \$140,000. This resulted in approximately \$1,500 in additional premiums due the State Fund. Also, by performing field audits, better communication lines are established between the State Fund and its participants.

RECOMMENDATIONS

THE STATE WORKERS' COMPENSATION FUND SHOULD FOLLOW STANDARD PROCEDURES TO CALCULATE AND APPLY PREMIUMS FOR ALL PARTICIPANTS.

THE GENERAL ASSEMBLY SHOULD CONSIDER AUTHORIZING THE CHIEF INSURANCE COMMISSIONER TO SUPERVISE AND REGULATE THE RATES AND SERVICE OF THE STATE WORKERS' COMPENSATION FUND.

ADDITIONALLY, THE GENERAL ASSEMBLY SHOULD CONSIDER AMENDING §38-5-850 OF THE SOUTH CAROLINA CODE OF LAWS TO ALLOW THE INSURANCE COMMISSIONER TO EXAMINE AFFAIRS AND METHODS OF OPERATION OF THE STATE WORKERS' COMPENSATION FUND EVERY THREE YEARS AND REPORT THE FINDINGS.

THE STATE WORKERS' COMPENSATION FUND SHOULD ESTABLISH POLICIES AND PROCEDURES FOR THE PROPER APPLICATION OF WORKERS' COMPENSATION PREMIUM RATES.

THE STATE WORKERS' COMPENSATION FUND SHOULD ESTABLISH POLICIES AND PROCEDURES FOR THE PROPER APPLICATION OF WORKERS' COMPENSATION RATING FORMULAS.

THE STATE WORKERS' COMPENSATION FUND SHOULD REQUEST THE DEPARTMENT OF INFORMATION RESOURCE MANAGEMENT TO PROVIDE A SYSTEMS ANALYST TO EVALUATE THE AUTOMATION OF THE LOSS EXPERIENCE RATING FORMULA. CONTROLS SHOULD BE INCORPORATED TO ENSURE THAT DATA PRODUCED BY THIS PROGRAM IS VALID.

THE STATE WORKERS' COMPENSATION FUND SHOULD PROVIDE NECESSARY RESOURCES WHICH WILL ENABLE IT TO PERFORM ROUTINE PAYROLL FIELD AUDITS OF MORE PARTICIPANTS.

Estimating and Billing of Premiums

Problems are noted in estimating and billing premiums. These problems affect both the budgetary operation of participants, and the State Fund's cash flow and the fund balance.

Method for Estimating Premiums

The State Fund's method for estimating annual premiums for its participants is poor. The State Fund has not used current payroll information, and has not applied the loss experience rating formula properly when estimating premiums (see p. 17).

According to State Fund officials, participants are not asked to supply their anticipated payroll for the coming year. Instead, the State Fund applies a percentage increase to the participant's latest available payroll information which is two years old. Also, loss experience data is only estimated for participants when determining estimated premiums and is not actually computed until adjusted premiums are calculated after year-end (see p. 17).

Other self-insured funds request that participants provide anticipated payroll information for the coming year before estimates are made. Also, they compute loss experience data using the National Council on Compensation Insurance (NCCI) standards before the estimate is made.

By not knowing the actual loss experience data and/or not having more current payroll information available, estimated premiums are subject to significant adjustments at year-end and could cause problems for participants' budgets. For example, one participant was charged an estimated premium that was one-sixth of the actual amount. The participant was estimated to owe \$6,000, but was later billed another \$30,000 for a total of \$36,000.

Final Premium Billing

The State Fund is not timely in updating the estimated premiums billed to the actual premium required from participants. Some premiums have not been adjusted to an actual amount and have been billed as estimates for almost two years. As a result, participants could experience budgetary problems when such long-term adjustments are made and the State Fund's cash flow is not be maximized.

The State Fund estimates annual premiums for its participants by December 1 of the previous year. These estimated premiums are, according to a State Fund official, adjusted to a final premium by the end of the first quarter following the year of the premium calculation, when actual payrolls are received from participants. For example, premiums for 1984 would be estimated by December 1, 1983. Once the employer's actual payroll for 1984 is received, usually by April 1, 1985, the estimated premium would be adjusted to actual. Therefore, 1984 premiums should be adjusted during 1985.

The Audit Council reviewed State Fund data which reflected adjustments to participants' estimated premiums during calendar year 1985. According to this data,

approximately 170 (31%) of the 1983 premiums and 35 (6%) of the 1982 premiums did not receive a final adjustment and billing (or crediting) until 1985.

Unless premium billings are processed in a timely manner, some participants could be given billing adjustments from previous years which have not been included in the present budget. For example, one participant received notification in May 1986 that over a three-year period, it owed approximately \$15,000 in back premiums to the State Fund. This amount was for premium years 1983, 1984 and 1985. The participant stated that it had supplied the required information by the due dates for all years. However, it did not receive the adjusted billing for 1983 and 1984 until May 1986 and had no way to recover funds or generate new revenues to cover the billings for these particular years.

RECOMMENDATIONS

THE STATE FUND SHOULD REQUEST THAT ALL PARTICIPANTS PROVIDE ANTICIPATED PAYROLL INFORMATION BEFORE ESTIMATED PREMIUMS ARE CALCULATED.

THE STATE FUND SHOULD APPLY THE EXPERIENCE RATING FORMULA STANDARDS ACCORDING TO THE NATIONAL COUNCIL ON COMPENSATION INSURANCE.

THE STATE WORKERS' COMPENSATION FUND SHOULD PROVIDE THE NECESSARY RESOURCES TO CORRECTLY ADJUST PARTICIPANTS' PREMIUMS IN A TIMELY MANNER.

Claims Management

The following section of the report deals with problems in claims management. Such problems as special handling of employee cases and problems with benefit payments were found. Additionally, more controls are needed in securing Second Injury Fund reimbursement. All of these problems affect State Fund revenues and the State Fund's ability to pay claims and remain solvent.

Handling of Employee Claims

The State Fund has deviated from its usual procedures for handling some claims for employees of the Workers' Compensation Commission and employees of the State Fund. This raises a question of whether claims for employees are appropriately handled. In a review of all Workers' Compensation Commission and State Fund employee claims since 1983, in which more than \$500 was paid (nine cases), it was found that one-third of the time the State Fund did not handle the claims in accordance with its usual procedures.

Although the State Fund has no formal written policies and procedures to guide its operations (see p. 44), according to State Fund officials, claims of Workers' Compensation Commission, State Fund or Second Injury Fund employees are handled no differently from other claims unless an employee's claim is contested or involves permanent disability. Officials state these latter cases are routinely referred to the Attorney General's Office. However, the Audit Council found that the Chief Counsel has determined on a case-by-case basis whether or not the Attorney General's Office would be requested to furnish legal representation for such cases.

The following employee cases deviated from the usual handling of claims.

1. In one case involving special treatment of a Workers' Compensation Commission employee, medical benefits of \$1,239 were paid without an investigation. No time was

lost from the job. Compensability of the accident, "repeated reaching movement of the right arm," was questionable, according to State Fund staff, and the claim would normally have been investigated before any bills were paid. Additionally, on the order of the State Fund's Director, medical benefits were continued from 1980 to 1984. This claimant was allowed to transfer from a medical doctor to a chiropractor, contrary to State Fund instructions to participants which state that "chiropractor charges are accepted only if they are the only treating physician." The State Fund paid medical mileage for more than two years for this claimant's visits to the chiropractor at 66 miles per trip. Finally, medical bills were paid for this claimant for a back condition with no documented relationship to the stated elbow injury.

2. Another case involving special treatment of a Workers' Compensation Commission employee, injured while "unjamming a copy machine," was accepted for compensation after a State Fund investigator found no compensable accident and recommended that no benefits be paid. This case has been handled in its entirety by the Director's Administrative Assistant instead of compensation examiners who handle other cases. This case is still open and could involve permanent disability; \$6,837 has been paid as of June 19, 1986.
3. A third case involves special treatment of an employee who was awarded \$6,678. In this case, a State Fund attorney representing the State Fund appeared before the Workers' Compensation Commission and settled his former Administrative Assistant's claim for an amount which was twice as much as the doctor's disability rating indicated. Yet, in a different Workers' Compensation Commission employee case, he stated at an informal conference before the Commission that he would have to refer the case to the Attorney General rather than allow a settlement of more than the doctor's rating.

The South Carolina General Assembly has affirmed in the statement of purpose for the State Ethics Law that the people of South Carolina want legislation "to insure that conflicts of interest of public officials and employees be eliminated to the extent possible." To avoid an appearance of conflict of interest, the Georgia Risk Management Division of the Department of Administrative Services, which handles State employees' workers' compensation claims, has established a formal written policy. The policy mandates

that agency employee cases involving workers' compensation disability be referred to the firm designated by the Attorney General's Office to defend the State in these cases.

When employee cases receive special treatment, this raises the question of whether employees are receiving benefits to which they are not entitled. This situation could also lead to the public perception that the State Fund is biased in its treatment of some individuals.

RECOMMENDATIONS

THE STATE WORKERS' COMPENSATION FUND SHOULD DEVELOP WRITTEN PROCEDURES FOR THE HANDLING OF WORKERS' COMPENSATION COMMISSION, STATE FUND AND SECOND INJURY FUND EMPLOYEE CLAIMS. A FORMAL WRITTEN AGREEMENT SHOULD BE DRAWN UP WITH THE ATTORNEY GENERAL'S OFFICE DEFINING EACH AGENCY'S RESPONSIBILITIES IN THE HANDLING OF THESE CLAIMS.

THE STATE WORKERS' COMPENSATION FUND SHOULD ENSURE THAT CLAIMS OF STATE FUND, WORKERS' COMPENSATION COMMISSION AND SECOND INJURY FUND EMPLOYEES ARE HANDLED IN ACCORDANCE WITH FORMAL WRITTEN PROCEDURES.

Lawyer/Legislators Representing Clients Against Fund

Questions have been raised regarding the practice of lawyer/legislators representing clients against the State. Lawyer/legislators represent clients against the State Fund which is made up of revenues from the State and other governmental entities. The Director of the State Fund, who serves a six-year term, is appointed by the Governor, with the advice and consent of the Senate. Additionally, the

Legislature establishes the laws governing the operations of the State Fund and the scrutiny imposed on the agency's operations. Legislative involvement includes who may be covered by the State Fund, premium settings, claims management and issues regarding terms of settlements. However, the Workers' Compensation Commission serves as administrator and judicial body over the Workers' Compensation Law. The Workers' Compensation Commission has final approval over the settlement of all cases. The authority to set attorney fees for practicing before the Commission is established by the Legislature.

According to Workers' Compensation Commission information, 465 State Fund cases involving attorneys have been closed in the last 28 months. The Audit Council reviewed these cases and found that 68 cases involved 15 of the 55 legislators who are attorneys, or members of their firms who represented claimants against the State Fund. Compensation benefits in the 68 cases totaled \$842,711 (21%) of the compensation benefits paid in all closed cases involving attorneys for the State Fund in that time period.

Additionally, 101 (25%) of all the contested cases for the same time period were reviewed by the Audit Council. Of these, 15 cases were handled by legislators' firms and payments accounted for 22% of the compensation benefits of the sample.

The State Ethics Law

Section 8-13-500(3) of the South Carolina Code of Laws states, in part:

It shall be a breach of ethical standards for a business, in which a public employee or public official has a financial interest, knowingly to act as a principal or as an agent for anyone other than the State...in connection with any contract, claim or controversy, or any judicial proceeding in which the public employee or public official either participates personally and

substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise...where the State or governmental entity is a party or has a direct and substantial interest.

Other states have disallowed the practice of lawyer/legislators representing clients before state agencies by statute or case law. In 1982, Georgia's Supreme Court interpreted a provision of its State Constitution which provided that "[p]ublic officers are the trustees and servants of the people and at all times amenable to them." The Court ruled that lawyer/legislators as public officers are trustees of the people and as such cannot represent clients in civil action where the State is a party.

Section 8-13-10 establishes the findings and purpose of the State Ethics Law which states, in part:

The General Assembly hereby finds and declares that elected public office and public employment is a public trust and any effort to realize personal gain through official conduct is a violation of that trust. [Emphasis Added]

The federal government has addressed the issue directly in Title 18, Section 205 of the United States Code of Laws. This law prohibits federal attorneys or congressmen from representing clients against the federal government. Violations can result in fines of up to \$10,000 and two years in prison.

The Code of Professional Responsibility

The Code of Professional Responsibility was adopted in South Carolina under Rule 32 of the Supreme Court Rules of Practice and provides guidance for lawyer conduct. The Code requires attorneys to comply with the provisions of the Disciplinary Rules. Violations of Disciplinary Rules can lead to sanctions against an attorney by the State Supreme Court.

Two Disciplinary Rules may be applicable to lawyer/legislator practice before the State Fund. Disciplinary Rule 8-101, Action as a Public Official, states in part:

- (A) A lawyer who holds public office shall not:
 - (1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest.
 - (2) Use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client.

The South Carolina Bar's Ethics Advisory Committee stated in Ethics Advisory Opinion Number 85-19:

DR8-101 is violated when the attorney/legislator attempts to exert an influence on the administrative agency (or any other governmental agency) due to his position in the Legislature or the attorney/legislator participates in a matter pending in the Legislature which directly effects or could directly effect his potential client's position.

Disciplinary Rule 9-101, Avoiding Even the Appearance of Impropriety, is also relevant. It provides in part:

- (B) A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee.
- (C) A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

Ethics Advisory Opinion Number 85-19, in applying Disciplinary Rule 9-101 to the issue of lawyer/legislators stated, in part:

If these [legislative] actions create the opportunity to influence a decision by the administrative agency or create the impression that his position as a legislator may effect the outcome before an administrative agency, clearly the representation by the attorney would be improper in violation of both the above Disciplinary Rules. [DR 8-101 and DR 9-101] If it is determined that the Disciplinary Rules have been violated, clearly any appearance on behalf of a client by Attorney X in front of that agency would be improper.
[Emphasis Added]

In addition, the Opinion states that this issue would apply to members of the lawyer/legislator's firm.

When lawyer/legislators represent clients against State agencies, agency officials could feel they are placed at a disadvantage since their appointment and salary is considered by the General Assembly. The Director of the State Fund has the authority to approve all final settlement agreements which are funded by State and other governmental entities' revenues. High settlement agreements can cause an increase in premiums. Additionally, the Director decides whether or not the State Fund will appeal to the Workers' Compensation Commission to review whether the State Fund should pay the award. Attorney fees are contingent upon the size of the awards.

The following examples were noted during the Audit Council review of contested State Fund cases:

1. In one case, an appeal had been filed by the State Fund attempting to reverse a permanent disability ruling for a claimant who the State Fund believed was able to work. In this case, a private investigator had been hired by the State Fund to prove the claimant was able to work. Video footage of the claimant working had been secured. However, a meeting was held between the Director and Legal Counsel of the State Fund and the claimant's attorney who was a lawyer/legislator.

During this meeting, the Director of the State Fund ordered the case settled for a sum of \$90,000 over and above payments already made. The State Fund attorney's advice to appeal the case to the full Commission was overridden by the Director.

2. In another case, an outside counsel had been hired to represent the State Fund when the State Fund attorney handling the case left the State Fund. The retained counsel agreed the case should be denied and no death benefits paid. The opposing counsels were lawyer/legislators. This case was settled between the State Fund and opposing attorney prior to the hearing. A file note from the retained attorney to the Director stated, "I feel certain that we can establish that where he was found was not in response to any kind of call..." The case was settled for \$22,500.

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CLARIFY
WHETHER LAWYER/LEGISLATORS' REPRESENTING
CLIENTS IN STATE AGENCY ADMINISTRATIVE
PROCEEDINGS IS IN THE BEST INTEREST OF
THE STATE AND IS IN COMPLIANCE WITH THE
STATE ETHICS LAW.

Payment of Temporary Total Disability Benefits

Temporary total disability benefits are not paid to claimants in a timely manner. In the Audit Council's sample of all cases closed in 1984 and 1985 (373), time lapse data was derived for 57 recipients of temporary total disability benefits. One hundred percent of those cases were out of compliance with the statutory requirement for starting compensation payments. In 57 cases sampled, there was an average time lapse of 105 days, or more than three months between the State Fund's knowledge of an injury and the time a payment to the claimant was initiated. Further, in uncontested cases which required no investigation, still 39 days elapsed before payment was initiated.

Comparative time lapse data from the Workers' Compensation Commission shows that the State Fund ranked

90th out of 109 South Carolina high volume carriers in timeliness of compensation agreements, and additionally could rank lower in timeliness of actual benefit payments. Though some carriers begin paying compensation benefits before an agreement is signed or at the time of the agreement, in the sampled cases, the State Fund waited an average of 23 days after an agreement was signed to initiate payments.

According to §42-9-10 of the South Carolina Code of Laws, temporary total disability payments are to be paid to an injured employee during his disability. Further, §42-9-230 specifies:

...the first installment of compensation payable under the terms of an agreement shall become due on the fourteenth day after the employer has knowledge of the injury or death, on which date all compensation then due shall be paid.

The intent of these benefits is to replace wages lost because the injured employee cannot work.

Additionally, by not paying in a timely manner, the State Fund is subject to penalties. Section 42-9-90 provides for a penalty of 10% to be added to compensation which is not paid when due unless a Workers' Compensation Commissioner excuses this nonpayment. The Workers' Compensation Commission has not routinely monitored timeliness or imposed the specified fines on the carriers.

The effect of this lack of timeliness in the payment of benefits is that the State Fund is not complying with the law, and claimants are not receiving benefits when they are needed. In 90% of the cases sampled, claimants had returned to work before benefit payments started. In these cases, claimants could suffer hardships that the Workers' Compensation Law is designed to prevent.

RECOMMENDATIONS

THE STATE WORKERS' COMPENSATION FUND
SHOULD BE REQUIRED TO COMPLY WITH
§42-9-230 OF THE SOUTH CAROLINA CODE OF
LAWS RELATING TO THE PAYMENT OF
COMPENSATION BENEFITS.

THE STATE WORKERS' COMPENSATION FUND
SHOULD MONITOR ITS COMPLIANCE WITH THE
TIME REQUIREMENTS OF §42-9-230 AND
INSTITUTE CORRECTIVE MEASURES WHEN
PROBLEMS ARE INDICATED.

Payment of Medical Bills

The State Fund has not given adequate attention to the timely payment of medical bills. A 1984 participant survey done by the State Fund showed 14 of the respondents had complaints about the State Fund's slow payment of medical bills. However, State Fund management has not made timely payment of medical bills a priority. The State Fund does not keep statistics or monitor the timeliness of their payments, and has followed a practice of waiting until all anticipated bills for a claimant are received before paying any of them.

The Audit Council reviewed a sample of 373 closed cases for 1984 and 1985. Medical bills were chosen from this sample controlling for certain conditions which could force a delay in payment. Such conditions include: (1) bills sent to the Workers' Compensation Commission for approval of the payment amount; (2) bills submitted incorrectly that must be held until the medical provider furnishes necessary information or documentation; (3) bills held while a case is investigated for compensability; and (4) bills held while a case is being contested by the State Fund.

The 138 bills reviewed in the Audit Council sample were held at the State Fund for an average of 42 days before

payment was initiated. Nine bills were held for 90 days or more for no documented reason. Additionally, the process of getting a check from the Comptroller's Office and mailing it could add approximately ten days before a recipient receives a check from the State Fund.

The South Carolina Senate Labor, Commerce and Industry Committee has stated that Workers' Compensation Law intends injured workers to receive swift and sure medical, rehabilitative and/or compensatory benefits to minimize the physical, psychological, and financial costs of occupational injuries. The Committee is conducting an investigation which has, as one of its main objectives, "to discover the promptness, reasonableness and adequacy of income and medical payments to injured workers." [Emphasis Added]

Some insurance or claims servicing companies which handle a large volume of workers' compensation claims in South Carolina have made efforts to improve the timeliness of their medical payments. These companies monitor the timeliness of their payments and attempt to pay medical bills as they are received. One servicing company reports that its average time lag in medical payments has been reduced to less than four days.

A lack of timeliness in medical payments means claimants often receive unpleasant and threatening notices from medical providers and could lose good credit ratings. Dissatisfaction with the State Fund's service in medical bill payment could also have contributed to the State Fund's loss of accounts.

RECOMMENDATION

THE STATE WORKERS' COMPENSATION FUND
SHOULD MONITOR THE PAYMENT OF MEDICAL
BILLS TO ENSURE THAT THEY ARE PAID AS
SOON AS POSSIBLE AFTER RECEIPT. ALL
UNNECESSARY DELAYS IN PAYMENT TO MEDICAL
PROVIDERS SHOULD BE ELIMINATED.

Monitoring of Temporary Total Disability Cases

Temporary total disability cases are not adequately monitored by staff at the State Fund. The Audit Council's sample of 373 State Fund cases, closed in 1984 and 1985, included 67 cases in which claimants received payments for temporary total disability. In six of these cases, there was either substantial overpayment, inadequate medical monitoring or an inadequate attempt to stop payment when the claimant was no longer disabled. Documented overpayment in these cases totaled \$4,046, which accounts for 3% of the temporary total benefits paid in the 67 cases reviewed (\$145,171). Since the State Fund paid \$3,343,428 in temporary total benefits in 1985, a 2% overpayment would amount to \$66,869 for the year in overpayments. Additionally, as estimated by the Audit Council, possible unnecessary payments of \$7,500 were made due to the State Fund's inadequate medical monitoring and inadequate attempts to stop payment.

Section 42-9-10 of the South Carolina Code of Laws states:

When the incapacity for work resulting from an injury is total, the employer shall pay, or cause to be paid...to the injured employee during the total disability, a weekly compensation equal to sixty-six and two-thirds percent of his average weekly wages.

According to Workers' Compensation Commission Regulation 67-10, temporary total benefits should continue only until the claimant returns to work or is able to return to work. Therefore, once a claimant is pronounced able to work by a doctor, the State Fund should attempt to stop paying benefits. Two options are available to the State Fund: (1) request the claimant sign a Form 17 agreeing that he is able to return to work; or (2) file for a stop-payment hearing. In the Audit Council's sample, only one stop-payment hearing was requested and held.

Case reports required by the Workers' Compensation Commission every 60 days are not used by State Fund staff for monitoring the status of disability. Instead, the claims examiners rely on correspondence from employers and doctors to inform themselves of the status of the claimant's disability.

The effect of inadequate monitoring is that temporary total benefits could extend over long periods of time when benefits are not due. Thereby, the claimant receives undeserved benefits. The Audit Council's review cited the following examples:

1. The State Fund did not ask for a doctor's disability status report for nine months on a claimant who received \$13,997 in temporary total benefits.
2. Temporary total payments were started in error when a claimant was working and continued until \$1,140 had been paid.
3. A claimant received \$2,632 in overpayment when she received benefits for three months after the State Fund had received a doctor's report stating that she had already been back at work for a month.

The State Fund continued to pay temporary total benefits to two other claimants for months after doctors pronounced them able to return to work; no documented attempt was made to get them to sign a Form 17 or request a stop-payment hearing. The current statutes provide no specific authority to the State Fund for the recovery of overpayments to claimants.

RECOMMENDATIONS

THE STATE WORKERS' COMPENSATION FUND
SHOULD USE THE WORKERS' COMPENSATION
COMMISSION'S REQUIRED 60-DAY REPORTS TO
CONTROL PROCEDURES FOR REGULAR MEDICAL
MONITORING AS WELL AS REGULAR CONTACT
WITH EMPLOYERS OF TEMPORARY TOTAL
DISABILITY CLAIMANTS.

THE STATE WORKERS' COMPENSATION FUND
SHOULD ROUTINELY REQUEST STOP-PAYMENT
HEARINGS TO ATTEMPT TO STOP BENEFITS TO
CLAIMANTS WHO ARE ABLE TO RETURN TO
WORK.

THE GENERAL ASSEMBLY SHOULD CONSIDER
ENACTING LEGISLATION TO GARNISH WAGES
AND STATE TAX REFUNDS FOR INDIVIDUALS IN
REPAYMENT OF DEBTS OWED THE STATE FUND.
IF LEGISLATION IS NOT ENACTED, THE STATE
BUDGET AND CONTROL BOARD SHOULD DEVELOP
POLICIES AND PROCEDURES FOR STATE
AGENCIES TO FOLLOW IN COLLECTING DEBTS.

Claims Investigations

Claims investigations at the State Fund are not effective. The Audit Council's sample of 373 cases, closed in 1984 and 1985, included 78 (21%) which were investigated by the State Fund to determine compensability. The time that lapsed between the State Fund's knowledge of the injury, and the date an investigation was assigned to an investigator, averaged 40 days. Additionally, when a request for a hearing before the Workers' Compensation Commission was the first notification of an accident, there was an average delay of 30 days before an investigation was assigned. Further, ten cases demonstrated more serious problems which included delays in investigation of more than three months, as well as staff inadequately responding to information requests from the legal department. Operational delays contribute to delays in providing benefits to claimants.

The following cases are examples of those reviewed:

1. In one case, for which the State Fund paid \$102,779, an investigation which was requested had not been conducted six months later.

2. Lack of completion of an investigation request was cited by the legal department as a major weakness in the conduct and outcome of a case in which \$43,412 was paid. The legal department sometimes had to work without information repeatedly requested, such as a doctor's rating or the medical history of a case.

Since §42-9-230 of the South Carolina Code of Laws specifies that the first installment of compensation payable is due on the fourteenth day after the employer has knowledge of the injury or death, investigations to determine compensability must be timely. Investigations for contested cases need to be completed by hearing or informal conference dates, or when settlements are proposed. The completion of investigations impacts the legal conduct and outcome of the case.

Poor handling of investigations occurs, in part, because there are no written policies and procedures regarding appropriate referral of cases for investigation (see p. 44), and no formal evaluation of whether useful information is supplied. Additionally, the State Fund does not use accurate measures of timeliness; time is measured only from the time the case is assigned to an investigator, not from the time a case is received by the investigator's supervisor. Since all cases are held in the supervisor's file until they are assigned to fit into an investigator's weekly itinerary, there is often lapsed time before investigators receive the assignments.

Untimely or missed investigations could contribute to slow payment of compensation benefits (see p. 36), and the lack of an investigative policy could result in ineffective use of investigators' time. Inefficient processing of cases could cause the State Fund to pay out benefits unnecessarily and weaken legal review and representation.

RECOMMENDATIONS

THE STATE WORKERS' COMPENSATION FUND
SHOULD KEEP ACCURATE STATISTICS ON THE

TIMELINESS OF INVESTIGATIONS AND
INSTITUTE CORRECTIVE MEASURES WHEN
NECESSARY.

THE LEGAL DEPARTMENT OF THE STATE
WORKERS' COMPENSATION FUND SHOULD
INSTITUTE A SYSTEM OF FORMAL FEEDBACK ON
THE ADEQUACY OF INFORMATION OBTAINED
FROM AN INVESTIGATION.

Second Injury Controls

Since FY 80-81, the State Fund has increased the amount of reimbursement received from the South Carolina Second Injury Fund by 932%. However, more controls are needed to help identify Second Injury Fund cases.

The Second Injury Fund reimburses employers and carriers when a claimant's present disability results from a preexisting impairment and subsequent injury arising out of, and in the course of, his employment. For the past four fiscal years, the State Fund has ranked first or second among carriers in the State in the amount of reimbursement recovered, based on figures obtained from the Second Injury Fund. In FY 84-85, the State Fund recovered over \$1.3 million from the Second Injury Fund.

However, the State Fund does not have adequate controls to assure that claims which qualify for reimbursement from the Second Injury Fund are detected in claims processing. The Audit Council sampled 373 cases closed in 1984 and 1985. Cases which had payouts greater than \$500 (129), were reviewed for possible Second Injury Fund reimbursement. Of these, 11 claims were accepted by the Second Injury Fund for a total reimbursement of \$228,060. However, the Audit Council identified three potential second injury cases which were overlooked or detected too late to file a claim.

Section 42-9-400 (f) of the South Carolina Code of Laws requires that an employer or his carrier:

...shall notify the Workers' Compensation Commission and the Director of the Second Injury Fund in writing of any possible claim against the fund as soon as practicable but in no event later than after the payment of the first seventy-eight weeks of compensation.

An increase in funds recovered from the Second Injury Fund is of substantial benefit to the State Fund. Second Injury Fund premiums are based on the total benefits paid by a carrier and are not affected by the amount of reimbursement the carrier receives. Therefore, an aggressive carrier's reimbursement is, in effect, paid for by other insurers who are not active in filing claims.

The State Fund has encouraged claims examiners to be aware of second injury opportunities. However, second injury cases can be difficult to identify, and the State Fund's processor of second injury claims only gets the cases if someone else identifies them and refers them to her. Some carriers use a system whereby each case is reviewed for second injury after a certain number of weeks of compensation has elapsed.

The effect of not identifying or capturing a Second Injury Fund case is a substantial loss to the State Fund and the State. Reimbursements from the Second Injury Fund in the Audit Council's sample ranged from \$3,272 to \$71,626. Single cases missed could have meant as much as \$130,000 in reimbursement.

RECOMMENDATION

THE STATE WORKERS' COMPENSATION FUND SHOULD INSTITUTE TIGHTER CONTROLS TO MAKE SURE THAT NO SECOND INJURY CASES ARE MISSED. ALL CASES FOR WHICH TEMPORARY TOTAL BENEFITS HAVE BEEN PAID FOR 50 WEEKS SHOULD BE REVIEWED BY A SECOND INJURY CLAIMS EXAMINER.

Determination of Average Weekly Wage

The State Fund does not consistently use the average weekly wage as defined by law to compute compensation rates. Additionally, a Form 20 (form used to compute wage) is not used for contested cases as required by Workers' Compensation Commission Regulation 67-25.

The Audit Council sampled 25% of the 411 contested cases closed in 1984 and 1985 and found that the State Fund complied with Workers' Compensation Commission Regulation 67-25 in submitting a Form 20 in 39 (39%) of these cases. Furthermore, the sample revealed 14 cases in which a hearing was held before the Workers' Compensation Commission and a required Form 20 was never submitted.

Section 42-1-40 of the South Carolina Code of Laws defines the average weekly wage as the:

...earnings of the injured employee in the employment in which he was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury.

Workers' Compensation Commission Form 20 is the authorized statement of wages and days worked used to compute the average weekly wage as defined by §42-1-40. Furthermore, Workers' Compensation Commission Regulation 67-25 states:

...in all cases Form No. 20 ...must be submitted to the Commission along with agreement as to compensation or at the time of the hearing in contested cases.

However, the State Fund does not require submission of a Form 20 to pay compensation or settle a case. Instead, the State Fund uses the claimant's current salary.

Additionally, the Workers' Compensation Commission does not enforce the requirement that Form 20s be submitted at the time of the compensation agreement or in contested cases that do not require hearings. This practice could encourage the State Fund's use of the current salary in these cases.

The State Fund is not in compliance with §42-1-40 of the law or with Workers' Compensation Commission

Regulation 67-25. As noted, fewer than half of the Audit Council's sample of contested cases were found to be in compliance with the Regulation.

Since the State Fund does not use the required Form 20 in all cases, the average weekly wage is not determined in a consistent manner. This can be unfair to both employers and claimants. In one case, a claimant's average weekly wage as computed by the Form 20 was \$125 more than the current salary; while in another case, the claimant's correctly computed average weekly wage was \$150 less than his current salary.

RECOMMENDATIONS

THE STATE WORKERS' COMPENSATION FUND
SHOULD BE REQUIRED TO COMPLY WITH
§42-1-40 OF THE SOUTH CAROLINA CODE OF
LAWS WHEN COMPUTING THE AVERAGE WEEKLY
WAGE TO DETERMINE THE COMPENSATION RATE.

THE STATE WORKERS' COMPENSATION FUND
SHOULD BE REQUIRED TO COMPLY WITH SOUTH
CAROLINA WORKERS' COMPENSATION
COMMISSION REGULATION 67-25 REQUIRING
THE SUBMISSION OF A FORM 20 IN CONTESTED
CASES.

CHAPTER III

ADMINISTRATION

Chapter III discusses problems with operations at the State Fund. The lack of an agency policies and procedures manual and ineffective information resource management have handicapped staff in the performance of their duties. These, as well as other problems, have contributed to overall weaknesses in administration. Any deficiency that contributes to a lack of economy in operations can affect the State Fund's overall financial structure, since all operations are funded by participant premiums.

Policies and Procedures

The State Fund does not have a formal written policies and procedures manual. Claims examiners are without an authoritative guide in processing claims for payments of benefits, and must rely on their individual interpretation of the law itself, enhanced by verbal instructions or by inter-office memos from a variety of officials within the agency. There are no written policies and procedures in certain key areas that could affect the outcome of a case, such as: referral of claimants for vocational rehabilitation; referral of cases for investigation; or, referral of claimants to physicians for disability ratings or second opinions. Claimants are not ensured they will be treated fairly and consistently.

Additionally, there are no written policies and procedures for determination of premiums for participants, control of billing procedures, or for setting the reserve for cases. It is difficult to hold agency employees accountable for policies and procedures which are not written or formal.

Section 1-23-140 of the South Carolina Code of Laws details the need for written guidelines for all State agencies. Policy manuals for the administration and control

of agency activities are generally accepted as good management practice. Written policies and procedures are needed to ensure an adequate degree of consistency and control in the operation of the agency. This is particularly important when claimant benefits are handled. Additionally, ongoing changes in the laws and regulations increase the need for an effective internal control system.

State Fund employees expressed confusion and a lack of knowledge of current policies, as well as a desire for a single authoritative source of guidance. Claimants and employers have been treated inconsistently in a wide range of areas. Some of these areas are the following: calculation of a participant's premium (see p. 17); whether and to what extent prisoners are covered by the State Fund; the acceptance or rejection for payment of chiropractors' bills; when a doctor's evaluation of disability is to be obtained; how temporary total disability claimants are monitored (see p. 36); how the average weekly wage is computed (see p. 42); and, when a file should be referred to investigations (see p. 38).

RECOMMENDATION

MANAGEMENT AT THE STATE WORKERS'
COMPENSATION FUND SHOULD DEVELOP AND
MAINTAIN A FORMAL, WRITTEN POLICIES AND
PROCEDURES MANUAL WHICH ADDRESSES ALL
AGENCY OPERATIONS.

Information Resource Management

Information resource management at the State Fund is ineffective. The goals of information management are not being met. Problems with the current information system have resulted in considerable wasted time and have allowed inefficient claims processing activities, as well as inaccurate information products. The following are specific

problems with the effectiveness and efficiency of information resource management at the State Fund:

(1) The State Fund has released inaccurate information. When the Audit Council requested that the State Fund provide the number of cases closed in calendar years 1984 and 1985, a discrepancy of more than 1,000 cases was found between the State Fund's count for 1984 and an actual physical count of case files by the Audit Council. State Fund officials could not satisfactorily explain why the computer-produced statistics reported were not accurate. Additionally, the State Fund reported inaccurate information in its annual report to the Legislature.

(2) The agency has not collected and disseminated adequate statistical information. Statistics to evaluate program effectiveness, to monitor the performance of agency personnel, or to measure agency compliance with the law are not compiled. Statistics are not kept to determine whether the timeliness of benefit payments to claimants is in compliance with the law (see p. 32). The State Fund has not measured expenditures on private vocational rehabilitation providers or private surveillance companies to attempt to assess the economy and effectiveness of these programs. No statistics are kept on the accuracy of reserves established for cases. The productivity of individual claims examiners is not recorded to measure employee performance. Employers are not monitored for timeliness of premium payments or timeliness in reporting injuries as mandated by law.

Additionally, information about State Fund activity furnished to employers is inadequate. Regular detailed reports about claims activity and premium determination, such as those furnished by private carriers, have been requested by agencies covered by the State Fund since 1975. The State Fund has not responded to these requests.

(3) State Fund management has not adequately maintained its computerized information system, in use since 1979. The State Fund has not corrected problems or made

changes in the system to reflect agency needs. Instead of solving system problems by correcting the system as they have occurred, management has instructed agency staff to redo, by hand, many of the computer-produced reports each time they are issued to correct inaccuracies or alter the format.

The State Fund has not initiated changes in the system to overcome agency weakness in management controls or aid management in identifying problems. For example, the system could help the State Fund to avoid duplicate payments, identify potential second injury cases (see p. 40), avoid overpayment of temporary total benefits (see p. 36), or identify cases which are being paid close to their reserve. It could also be programmed to print reminder notices when action should be taken to review a case, as well as summary data on previous cases. An automated charge-out system for the case files could help eliminate the agency's record management problem (see p. 50).

Effective information management has not been a priority for State Fund management. Agency budget requests have been based on estimated costs of operating the present system rather than the estimated cost of adequate system maintenance and improvements. The agency has not established an ongoing committee of system users and managers to coordinate system maintenance and recommend improvements. Management has taken a reactive approach to problems. The agency has no information systems professionals and yet the consultation of DIRM's Office of Information Technology Planning has not been obtained to assist in planning for system modification.

Two major goals of information resource management are: (1) to increase the availability, accuracy, timeliness, and quality of information used in the delivery of services, administrative operations, and decision making; and (2) to

provide for the efficient and effective management, procurement, and use of information technology for information processing.

Some large carriers and claims servicing companies of workers' compensation insurance, and other state agencies, such as the Workers' Compensation Fund in West Virginia, have more advanced and flexible information systems. These systems have management controls that prevent errors and generate statistical information which would be of use to the State Fund, its participants, and the Legislature. System maintenance is important to carriers, and improvements should be a continuing process. A more effective information system could save significant staff time, increase the volume of claims handled and improve service to claimants and employers. Staff at one claims servicing company estimate they can process more than twice as many claims with the same number of staff since their information system was implemented.

The inaccurate information produced by the State Fund provides a misleading base for legislative assessment of the agency and its programs. The State Fund's lack of information to evaluate agency programs could result in management wasting money on services which are not cost effective and contributes to an inability of management to identify and correct problems in personnel, services, or compliance with the law. The lack of reports which are offered by other insurance companies contributed to the State Fund's loss of accounts. The use of repeated inefficient manual operations to correct or change information system reports results in a costly waste of staff time.

New System

Due to a phaseout at the Division of Information Resource Management (DIRM) of the operating system used by

the State Fund, the State Fund computer programs will be changed to a different operating system. The new system is more flexible and will support a variety of capabilities that the State Fund does not now have.

Problems with the present system, advances in information technology, and the current change to a different operating system all mandate a major reevaluation of information system requirements for the State Fund.

If a new system is implemented with a "band-aid" approach, primarily correcting obvious problems in the present system, desirable features, which are not difficult to incorporate, can be omitted. To make changes piecemeal in the future would be more costly and less efficient and effective.

The following recommendations outline some issues critical to the successful development of the new system:

RECOMMENDATIONS

THE STATE WORKERS' COMPENSATION FUND
SHOULD CONSULT THE DIVISION OF
INFORMATION RESOURCE MANAGEMENT'S
INFORMATION TECHNOLOGY PLANNING OFFICE
TO OBTAIN GUIDANCE IN DEFINING ITS NEEDS
AND REFERRAL TO AN APPROPRIATE STATE
AGENCY OR PRIVATE CONSULTANT FOR SYSTEMS
DEVELOPMENT.

THE STATE WORKERS' COMPENSATION FUND
SHOULD ALLOCATE SUFFICIENT RESOURCES AND
ATTENTION, AS REFLECTED IN ITS
INFORMATION TECHNOLOGY PLANS AND BUDGET
REQUESTS, TO PROVIDE FOR THE ONGOING
MAINTENANCE OF ITS INFORMATION SYSTEM.

THE STATE WORKERS' COMPENSATION FUND
SHOULD INCORPORATE THE ABILITY TO

GENERATE APPROPRIATE MANAGEMENT
STATISTICS AND REPORTS INTO ITS
AUTOMATED INFORMATION SYSTEM.

THE STATE WORKERS' COMPENSATION FUND
SHOULD BE REQUIRED TO VERIFY AND MONITOR
THE ACCURACY OF ALL STATISTICAL REPORTS
PRODUCED BY THE AGENCY.

Records Management

The State Fund has not taken action to solve records management problems and has not adequately maintained its records management program. The State Auditor's 1984 Report identified the State Fund's weak control over its case files.

The Audit Council found that weak controls continue to exist over State Fund case records. Records are maintained in large paper files which are manually signed out from a central file room by agency personnel. State Fund employees have identified many problems with this system; it is time consuming to sign-out the files, and files are often misplaced and difficult to locate. The files contain the only supporting documentation for disbursements made in the cases and also contain information which might be considered confidential under the Freedom of Information Act (see p. 52).

Additionally, the State Fund has not maintained its records retention schedule, established with the South Carolina Department of Archives and History (Archives) in 1978. This schedule was implemented before the State Fund began to use its automated information system, which changed the form and content of some State Fund records.

According to §30-1-80 of the South Carolina Code of Laws, each agency is required to cooperate with the Department of Archives and History to "establish and maintain an active, continuing program for the economical

and efficient management of the records of the agency." Archives encourages agencies to designate records officers, in accordance with §30-1-20, to act as custodians of their records. Additionally, it is the responsibility of Archives to:

...recommend improvement in current management practices, including the use of space, equipment, and supplies employed in creating, maintaining, and servicing records.

Agencies regularly consult Archives for assistance in solving records management problems.

It is especially important, as cited by the State Auditor's Report to the State Fund, that "records which support the expenditures of funds and the propriety thereof must be safeguarded and protected from inadvertent loss." Records which are confidential and closed to the public, as are the State Fund's case records, must be sufficiently secured.

State Fund management has not taken action, other than instructing employees to charge files properly, to solve the case file control problem. Until recently, when the State Fund was contacted about possible update by Archives personnel, management had taken no action to maintain the records retention schedule.

State Fund management's lack of initiative has resulted in continued inefficient handling of claims. Staff cannot respond to inquiries in a timely manner with this system. Additionally, the lack of controls over the files allows the possibility of the loss of necessary accounting documents or the leak of confidential claimant medical documents.

Failure to maintain an effective records management program deprives the State Fund of the demonstrated advantages of these programs. These include relief of legal liability for documents destroyed in conjunction with the program, and the cost savings that accompany a program's continuing maintenance.

RECOMMENDATIONS

THE STATE WORKERS' COMPENSATION FUND SHOULD CONSULT WITH THE DEPARTMENT OF ARCHIVES AND HISTORY REGARDING ITS CASE RECORDS CONTROL PROBLEM.

THE STATE WORKERS' COMPENSATION FUND SHOULD UPDATE ITS RECORDS RETENTION SCHEDULE, AND THE DIRECTOR SHOULD DESIGNATE A RECORDS OFFICER TO HAVE ONGOING RESPONSIBILITY FOR RECORDS MANAGEMENT.

Confidentiality of Claimant Records

The State Fund could have violated the confidentiality of claimant records. A private vocational rehabilitation provider has been allowed to review State Fund files containing personal medical information in order to identify workers who could benefit from the services provided by the private company.

In April 1984, the State Fund requested an opinion from the Attorney General (AG) as to whether or not the State Fund's records were public records under the Freedom of Information Act (FOIA). An AG Opinion, dated May 10, 1984, found the records of the State Fund to be subject to the FOIA. However, each file that is released should be examined so that materials that "contain 'intimate details' of a 'highly personal' nature" are not made public, according to the AG opinion.

State Fund files typically contain Workers' Compensation Commission forms, medical reports, investigative reports, correspondence, and other miscellaneous documents. According to the AG opinion, documents such as medical reports, Workers' Compensation Commission forms, and miscellaneous documents should be

scrutinized to determine if personal privacy would be violated by their disclosure to the public.

Claims are reviewed by a State Fund claims examiner and those that he/she believes could benefit from vocational rehabilitation are reviewed by a vocational rehabilitation counselor with a private firm. Several files examined by the Audit Council contained information showing that the claimants suffered from post traumatic stress disorder, chronic recurring depression, and were mentally deficient.

RECOMMENDATION

THE STATE WORKERS' COMPENSATION FUND
SHOULD BE REQUIRED TO MAINTAIN THE
CONFIDENTIALITY OF CLAIMANT RECORDS IN
ACCORDANCE WITH THE FREEDOM OF
INFORMATION ACT.

Procurement of Claimant Services

The State Workers' Compensation Fund has not followed the Procurement Code in the purchasing of some services for injured workers. These services include purchasing medical equipment, vocational rehabilitation services and private detective services. In addition, the State Fund has entered into an agreement to purchase physical fitness club memberships.

Section 11-35-1210 of the South Carolina Code of Laws states, "All procurements shall be subject to all the appropriate provisions of this code, especially regarding competitive procurement methods and nonrestrictive specifications." Regulation 19-445.2100 requires that purchases between \$500.01 and \$1,499.99 be made only after solicitation of quotes from a minimum of two buyers and documentation of solicitation must be attached to the purchase requisition. For purchases between \$1,500.00 and \$2,499.99 three written quotations are required with documentation attached to the purchase requisition.

Purchases over \$2,500 cannot be made by the State Fund unless approved by the Division of General Services Materials Management.

The Audit Council consulted with the Division of General Services concerning the procurement of the equipment and services described above. Officials with General Services stated that the procurement of medical equipment, private detective services and health club memberships all fell under the Procurement Code. General Services stated that the vocational rehabilitation services could be exempt if these services are performed by a registered nurse.

The State Fund spent approximately \$149,000 on these services in FY 83-84 and FY 84-85. The Audit Council reviewed the amount expended on 238 individual purchases of these services totaling approximately \$143,000. In 100 (42%) of the purchases, the amount exceeded \$500. For four of the purchases, the amount exceeded \$2,500. The amount expended for these 100 purchases totaled \$110,831.58.

RECOMMENDATIONS

THE STATE FUND SHOULD BE REQUIRED TO
COMPLY WITH §11-35-1210 OF THE
PROCUREMENT CODE.

THE DIVISION OF GENERAL SERVICES SHOULD
CONDUCT A PROCUREMENT AUDIT OF THE STATE
FUND, INCLUDING THE PURCHASE OF CLAIMANT
SERVICES.

Purchase and Control of Medical Equipment

During the Audit Council's review of cases, the purchase of medical equipment for claimants was noted. Further investigation found that there are problems with both (1) procurement and (2) inventory of medical equipment. These problems have contributed to weak cost control measures.

Although the Audit Council could not determine the actual number, informal records and a State Fund estimate indicate that the State Fund owns between 30 and 60 TENS units, instruments used in treating pain, which cost approximately \$500 each. Additionally, wheel chairs and other items, such as hospital beds and exercise bikes, have been purchased. The Audit Council estimates that the State Fund spent \$19,000 for these items.

(1) The State Fund did not follow the State Procurement Code in purchasing this medical equipment (see p. 53). Even though individual items cost less than \$500, the State Procurements Manager has stated that for repetitive purchases, notwithstanding the dollar amounts involved on individual transactions, if the need for these items were to exceed \$2,500 per year, a separate contract would be appropriate and should be obtained on a competitive basis using the procedures of the South Carolina Consolidated Procurement Code (§11-35-1520 of the South Carolina Code of Laws). Although the lack of records does not make it possible to verify, the Audit Council concluded that the State Fund has averaged at least \$3,000 in repetitive medical equipment purchases for the past six years. They have not contracted with a medical equipment supplier or documented individual item purchase procedures, but instead have purchased in an ad hoc manner on a case-by-case basis.

(2) Further, the State Fund does not keep formal inventory records of state-owned medical equipment as required by §10-1-140 of the South Carolina Code of Laws. This equipment is purchased for claimants and could be reused. Since the equipment is purchased as a medical expense, the only formal record of its purchase is in the individual case file. The State Procurements Manager and State Auditor's Office have stated to the Audit Council that this state-owned medical equipment is accountable equipment. Therefore, an agency owning such items should maintain

inventory control until the equipment is no longer used, returned, destroyed or written off. Other State agencies with similar equipment, such as the Department of Vocational Rehabilitation and the Department of Mental Retardation, do follow purchasing and inventory policies.

The effect of the State Fund's lack of compliance with procurement and inventory regulations is that the State Fund could pay more and duplicate purchases of equipment. Also, by not acting aggressively to get equipment back from claimants, the State Fund could be overspending by purchasing new equipment unnecessarily.

RECOMMENDATIONS

THE STATE WORKERS' COMPENSATION FUND
SHOULD OBTAIN MEDICAL EQUIPMENT FOR
CLAIMANTS ACCORDING TO PROCEDURES
SPECIFIED IN THE STATE PROCUREMENT CODE
(\$11-35-1520 OF THE SOUTH CAROLINA CODE
OF LAWS).

THE STATE WORKERS' COMPENSATION FUND
SHOULD DEVELOP AND MAINTAIN AN INVENTORY
SYSTEM FOR MEDICAL EQUIPMENT. THE
MATERIALS MANAGEMENT OFFICE OF THE
DIVISION OF GENERAL SERVICES SHOULD BE
CONSULTED FOR GUIDELINES.

Hiring and Promoting Practices

The State Workers' Compensation Fund has hired and promoted individuals whose training and experience do not meet minimum standards for the positions held.

The Division of Human Resource Management (HRM) establishes minimum training and experience for each class of employee. Minimum training and experience are statements of the normally expected combination of education and experience generally associated with the attainment of

knowledge, skills and abilities necessary to function in a position.

According to a review done by HRM, seven (15%) of the State Fund's positions are held, or were held, by individuals whose training and experience did not meet minimum standards or were questionable at the time of appointment. All but one of these positions is considered a professional position.

1. Four of the seven positions are currently held by individuals who lack the stated minimum training and experience for the positions held. For example, one position has the minimum training and experience standards of a bachelor's degree and one year of related experience. However, the individual placed in the position had neither.
2. Three other positions were questionable in terms of whether the individual met the minimum training and experience upon appointment.

Several State agencies participate in a program called the Merit System. This program, operated by HRM, screens and tests job applicants to ensure they meet minimum training, education, and experience requirements. Certificates listing qualified individuals for vacant positions are provided to participating agencies upon request. The State Fund could join the Merit System for an annual fee of approximately \$3,500.

RECOMMENDATION

THE STATE FUND SHOULD JOIN THE MERIT
SYSTEM TO ENSURE THAT QUALIFIED
INDIVIDUALS ARE EMPLOYED BY THE AGENCY.

Monitoring of Special Investigator Activities

The State Fund has not effectively monitored the activities of an in-house investigator assigned to do surveillance of claimants suspected of filing false or exaggerated claims, or working while receiving temporary total benefits.

Prior to the hiring of an in-house investigator, the State Fund used a private investigator to do surveillance of claimants (see p. 53). The private investigator's reports included a summary of the investigator's activities, days surveillance was conducted, the time any activity was performed by the claimant, and a description of the activity. The investigators of standard worker's compensation claims at the State Fund also write up detailed descriptions of their activities, including persons interviewed, documentation obtained, and recommendations.

The Audit Council reviewed all cases assigned to the special investigator as of March 1986. In five of the 37 cases, no status report had been prepared even though the cases had been assigned an average of 2.8 months earlier. In the 32 cases with status reports, the average time between date assigned and date of the status report was 3.4 months. In one-half of the 32 cases with a status report, a second date for reviewing the status of the case had been established and passed without a status report being prepared. In five of the cases, the status report noted only that the investigator was "still working on the case."

Ineffective monitoring of the special investigator can result in unnecessary expenditures by the State Fund. For each week that an individual is working while receiving temporary total benefits, the State Fund could be losing up to \$295. In 24 of the cases sampled, the individual to be investigated was currently receiving temporary total benefits. The Audit Council estimates that the State Fund paid out \$40,000 in temporary total benefits between the time cases were assigned to the special investigator and the time the first status reports were done.

Surveillance could help to reduce the size of an award by showing that the claimant is capable of more activity than is indicated by the doctor's rating. A reduction of 10% in a disability rating for an individual at the maximum

compensation rate can result in a savings of approximately \$15,000 per case.

RECOMMENDATION

THE STATE FUND SHOULD ESTABLISH GUIDELINES FOR MONITORING THE ACTIVITIES OF THE SPECIAL INVESTIGATOR. DETAILED REPORTS SIMILAR TO THOSE OF A PRIVATE INVESTIGATOR SHOULD BE USED TO REPORT ON THE STATUS OF CASES. THESE REPORTS SHOULD BE PREPARED ON A REGULAR BASIS.

Foreign Travel

Staff at the State Workers' Compensation Fund have made a foreign trip without approval. According to Regulation 19-101.17, any foreign travel of a State employee requires prior approval of the Budget and Control Board regardless of the source of financing such travel. In May 1985, two State Fund employees traveled to London, England without prior approval, resulting in the unauthorized expenditure of approximately \$2,000.

RECOMMENDATION

THE STATE WORKERS' COMPENSATION FUND SHOULD BE REQUIRED TO ADHERE TO BUDGET AND CONTROL BOARD TRAVEL REGULATIONS. UNAUTHORIZED EXPENDITURES SHOULD BE CHARGED TO THE EMPLOYEE AND REPAYED TO THE GENERAL FUND.

Use of Private Vocational Rehabilitation Providers

The State Fund is using private vocational rehabilitation providers instead of the State Vocational Rehabilitation Department as the primary source of vocational rehabilitation services for claimants.

The State Fund has not maintained a record of the cases referred for vocational rehabilitation. However, the Audit Council was able to identify 67 referrals in FY 84-85 and FY 85-86. Of these, one case was referred to the State Vocational Rehabilitation Department, while 66 cases were referred to a private vocational rehabilitation provider.

The Audit Council reviewed the success rate for both a private provider, used frequently by the State Fund, and the State Vocational Rehabilitation Department in returning claimants to work. For FY 84-85 and FY 85-86, the rates were similar. The success rate determined for the private provider was 57% versus 50% for the State Vocational Rehabilitation Department.

State Fund officials stated that they prefer to use private vocational rehabilitation providers services because they: (1) help claimants obtain Social Security disability benefits and other types of government assistance; (2) take clients to and from job interviews and doctors' appointments; and (3) show clients how to use medical equipment. These services, however, do not directly reduce the amount of workers' compensation benefits a claimant receives. While State Fund officials stated that these services were more personalized and in-depth than those of the State Vocational Rehabilitation Department, an official with the Department stated they also can provide these services. Additionally, if the State Fund were to use the State Vocational Rehabilitation Department, the confidentiality of claimant records would be better protected since State Vocational Rehabilitation statutes include a confidentiality clause (see p. 52).

For FY 83-84 and FY 84-85, the Audit Council estimates the State Fund spent \$75,000 on private vocational rehabilitation providers. The services provided by the State Vocational Rehabilitation Department are provided to the State Fund at no cost.

RECOMMENDATION

THE STATE WORKERS' COMPENSATION FUND
SHOULD USE THE STATE VOCATIONAL
REHABILITATION DEPARTMENT FOR VOCATIONAL
REHABILITATION SERVICES TO CLAIMANTS.

Management of Participants' Loss Control

The State Fund is not monitoring the activities of its loss control program. This can result in the inefficient use of loss control services and, ultimately, more injuries to workers and more money paid in claims.

Good management practice dictates that goals and standards be set for a program and the effectiveness in meeting those goals and standards be measured. In addition, the General Accounting Office's publication, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions states, "it is the entity management's continuing responsibility to assess program results..." Without program objectives and measurement criteria, a program review cannot be meaningful.

The goal of the loss control program, according to the annual report, is:

...efficiency with safety and the
primary purpose to assist participants
in reducing employee accidents and
eliminating risks thereby reducing
experience modifier rates.

The State Fund, however, has not instituted any measurement criteria to determine if the program objective is being met.

According to an official with the State Fund, a questionnaire was sent to all participants of the State Fund in January 1985, shortly after the loss control program was instituted. In part from this questionnaire, a priority list of participants needing loss control services was developed. Participants with weak loss control programs were placed on a servicing schedule. The State Fund, however, did not compile the questionnaires in summary form.

In addition, the Audit Council could not obtain either the priority list or servicing schedule as of July 21, 1986. The State Fund is currently conducting its second survey of participants one and a half years after its first. The State Fund does not have a formal, written policy to evaluate new participants. As a result, new participants are not ensured loss control services.

RECOMMENDATION

THE STATE FUND SHOULD INSTITUTE
MEASUREMENT CRITERIA FOR ITS LOSS
CONTROL PROGRAM.

CHAPTER IV

SPECIAL PROGRAMS

The following findings deal with the Insolvency Fund and Crime Victims' Fund programs - auxiliary programs of the State Fund. In the continuing study of the Workers' Compensation Commission, the Audit Council will review the Insolvency Fund and its placement in the overall workers' compensation system. Recommendations referring to placement of this Fund will be made in the Workers' Compensation Commission audit. Regarding the placement of the Crime Victims' Fund and the Victim/Witness Assistance Program, the Governor's Committee on Criminal Justice, Crime and Delinquency should consider recommending, if necessary, a more appropriate location for the programs. Neither program is related to workers' compensation. Both are victim advocate programs which have grown substantially and are independent of State Fund operations.

Administration of the Insolvency Fund

The management of the State Fund has not effectively administered the Insolvency Fund. The State Fund's compliance with the law establishing the Insolvency Fund is questionable. Additionally, there is a need for clarification of the law. The Insolvency Fund was created by the Legislature in 1982 to ensure the payment of awards of workers' compensation benefits which are unpaid because of the insolvency of employers.

The Audit Council reviewed all cases in which benefits have been paid since the Insolvency Fund was established. Benefits in these 18 cases have totaled over \$330,000. The management has not established any written policies and procedures for the Insolvency Fund, but instead has allowed State Fund attorneys to administer the Insolvency Fund in an ad hoc manner. The following questionable or inconsistent practices were noted in the cases reviewed:

(1) Section 42-7-200 of the South Carolina Code of Laws requires the management of the State Fund to institute proceedings for the collection of funds paid out from the parties legally responsible. In 11 cases (61%), there was no evidence that this was done. In only one case has partial recoupment been obtained. Whenever recoupment was attempted, the claimant's attorney or firm partner was authorized to act for the Insolvency Fund.

(2) State Fund officials have been inconsistent in the procedure used for determining the employer's insolvency. The State Fund's Chief Counsel has stated that the insolvency of an employer could be determined only by a separate hearing at the Workers' Compensation Commission. Yet, the Commission ruled on the insolvency of six of the 18 employers. In 12 cases, the State Fund accepted insolvency and settled the case without the Commission's ruling.

(3) Although the law establishing the Insolvency Fund does not assign the State Fund the role of advocate, State Fund attorneys have defended the Insolvency Fund, questioned awards made by the Workers' Compensation Commission, and resisted payment of these awards. Thirteen of the 18 cases have been settled by compromise agreements between the Insolvency Fund and the claimant's and/or defendant's attorney, some for substantially less than the Workers' Compensation Commission award.

Section 42-7-200 requires the Director of the State Fund to administer the Insolvency Fund, to establish procedures for the implementation of the Insolvency Fund, and to institute proceedings for the collection of funds paid out.

Evidence points to the need for clarification of the law establishing the Insolvency Fund. Although the Director of the State Fund is given responsibility to implement procedures, he has no authority to promulgate regulations. The definition of insolvency, or how it is to be determined, is not specified in the law. The responsibility for being

an advocate or defender of the Insolvency Fund is not assigned, nor is the Insolvency Fund given due process rights, similar to those accorded the Second Injury Fund (§42-9-400[e]). Additionally, the law requires that the Insolvency Fund be maintained annually at a level of not less than \$200,000, but does not give guidance as to when the Insolvency Fund can be replenished. The State Fund has followed a practice of replenishing the Insolvency Fund to \$200,000 whenever it reaches \$150,000. Although State Fund attorneys have made some attempts to correct these problems, management has not made an adequate attempt to seek clarification of the law.

The State Fund is not in compliance with the law requiring recoupment proceedings for the collection of funds paid out. Additionally, this practice could have caused a loss of funds for the State. Inconsistency in administration of the Insolvency Fund and failure to correct problems with the law's clarity results in uneven application of its provisions and could, contrary to the law's intent, permit awards to remain unpaid or be delayed for long periods of time.

RECOMMENDATION

THE SOUTH CAROLINA GENERAL ASSEMBLY
SHOULD CONSIDER CLARIFYING §42-7-200 OF
THE SOUTH CAROLINA CODE OF LAWS
REGARDING, AT THE MINIMUM:

1. THE CRITERIA FOR DETERMINING
INSOLVENCY;
2. AUTHORITY TO PROMULGATE
REGULATIONS; AND
3. MAINTENANCE OF THE REQUIRED LEVEL
OF FUNDING.

Funding the Crime Victims' Fund

There is a lack of assurance that assessments are properly collected and transferred as prescribed by law to the Crime Victims' Fund. There is a question of whether management controls are adequate.

Crime Victims' operation and claims costs are paid out of a trust fund held by the State Treasurer. Court fees and fines levied on convicted persons are used to provide funds to the program.

Assessments of \$2 in the magisterial and municipal courts and \$20 in the General Sessions Courts may be made on conviction or bond forfeiture. These revenues are to be deposited through Clerks of Court to the State Treasurer where one-half are earmarked for the Crime Victims' Fund and one-half for the Department of Parole and Community Corrections.

There are several causes which contribute to the collection problems for the Crime Victims' Fund.

1. Fees and fines may be waived by magistrates and judges and, therefore, not be available for programs. It is estimated that this occurs 10%-15% of the time.
2. There is a lack of enforcement in the collection of revenues. No one agency is mandated to ensure the revenues collected are in fact deposited with the State Treasurer. Each agency is expected to provide its own resources to this end.
3. Other sources of revenues such as subrogation of costs and restitution have not been aggressively pursued to reimburse expenditures of the Crime Victims' Fund. In FY 85-86, \$13,464.91 was collected through other payments. No figures are available for previous years although staff stated collections were lower.

Further, the Crime Victims' Fund has projected its needs for claims payments on historical information, with no study to determine how many funds should be set aside to cover open claims or to predict the frequency of claims. Since the program is in the first years of implementation, this method is not reliable. As public awareness grew, the need for funds outgrew the funds available. In FY 81-82,

two cases were awarded at an average award of \$1,089, while in FY 84-85, 1,499 cases were closed with an average award of \$2,022.

Because collections were not effective, the following disparity has existed, as calculated by the Audit Council, between funds that could have been available (potential collections) and actual revenues collected.

TABLE 3
POTENTIAL AND ACTUAL REVENUES TO THE CRIME VICTIMS' FUND
FROM ASSESSMENTS UNDER REFORM ACT 100-1981

<u>Year</u>	<u>Potential Collections</u>	<u>Actual Collections</u>	<u>Difference</u>
FY 81-82	\$ 845,053	\$ 357,214	\$ 487,839
FY 82-83	880,536	638,038	242,498
FY 83-84	909,104	644,534	264,570
FY 84-85	<u>931,907</u>	<u>675,961</u>	<u>255,946</u>
TOTAL	<u>\$3,566,600</u>	<u>\$2,315,747</u>	<u>\$1,250,853</u>

On December 9, 1985, the Director of the State Fund (Director of the Victims' Compensation Fund) informed the Crime Victims' Advisory Board, the Crime Victims' Fund would possibly be out of money before the end of the fiscal year. However, the Senate Finance Committee was formally notified late in the Session on April 9, 1986, that reserves were depleting rapidly and a shortfall was expected.

On May 24, 1986, the Appropriation Act was amended to transfer \$650,000 to the Victims' Compensation Fund. Adequate collections could have prevented this problem (see Table 3).

Additionally, the Legislature reduced the maximum award cap from \$10,000 to \$3,000 to hold costs down, and cut funeral expenses to \$1,000. The overall effect of this situation is that some victims could suffer unnecessary hardship. Analysis of records indicates that the reductions

in awards will cause 41 current victims to go uncompensated to some degree for medical, wage or funeral expenses. As of July 1986, the Crime Victims' Fund estimates a backlog of claims awaiting payments of \$130,000.

RECOMMENDATIONS

A STUDY SHOULD BE MADE OF THE CRIME VICTIMS' FUND'S RESERVING PRACTICES INCLUDING METHODS OF PROJECTING NUMBERS OF CLAIMS AND AMOUNTS OF AWARDS.

THE GOVERNOR'S COMMITTEE ON CRIMINAL JUSTICE, CRIME AND DELINQUENCY SHOULD STUDY THE FUNDING MECHANISMS AND COORDINATION OF FUNDING FOR THE CRIME VICTIMS' FUND. RECOMMENDATIONS SHOULD BE MADE TO ENSURE NECESSARY FUNDS FOR THE CRIME VICTIMS' FUND.

Statutory Definition of Victim

There are cases of injury related to crime that are not being compensated under the Crime Victims' Compensation Fund. Cases which involved direct physical injury, as stated in the law, can be compensated. However, some cases were reviewed by the Audit Council in which no direct physical injury was found, but request was made for compensation for psychological treatment. The Crime Victims' Fund has not developed statistics which would provide information on the extent of this problem. These cases raise a question of the need to study expanding the present definition.

1. The victim is a 55-year-old female who was the victim in an episode of pointing and presenting firearms. The offender entered her place of business with a shotgun and pointed it at her.
2. The victim is a five-year-old female who was forced to participate in pornographic photography sessions.

3. The victim is a 13-year-old male who was sexually molested on several different occasions over a period of several months.
4. The victim is an eight-year-old female who was a victim of a lewd act wherein an adult male exposed himself to her and forced her to rub him on his genitals.

This situation exists because the statutes regarding services to victims are inconsistent in their definition of who is a victim of crime. Section 16-3-110 et seq. of the South Carolina Code of Laws, under which the Crime Victims' Fund is established, defines a victim as:

...a person who suffers physical injury or death as a result of crime.

Whereas, the Victim/Witness Assistance Program, an auxiliary program to the Crime Victims' Fund and operated by the same staff, defines victim under §16-3-1400 (1) of the Code as:

...a person who suffers direct or threatened physical, emotional or financial harm as the result of the commission or attempted commission of a crime. 'Victim' also includes the immediate family members of any crime victim who is a minor or who is incompetent or the immediate family of a homicide victim.

In the statement of legislative intent to §16-3-1510, the Legislature has recognized that the State has a responsibility to provide support to a network of services to victims of crime, including victims of domestic violence and criminal sexual assault.

As of 1984, 39 states, the District of Columbia, and the Virgin Islands have enacted legislation providing compensation for some victims of crime. According to a 1982 report, more than 40 million victimizations occur in the United States each year. Of 1,000 people, 34 will be a victim of some violent crime. In South Carolina, in 1981, there was a violent crime committed every 23 minutes.

In some of these cases, persons who did not suffer any direct physical injury could have suffered psychological

trauma. Situations which include observers of homicides involving family members, and victims of sexual abuse should be studied.

RECOMMENDATION

THE GOVERNOR'S CRIMINAL JUSTICE, CRIME AND DELINQUENCY COMMITTEE SHOULD STUDY THE EFFECTS THE CURRENT NARROW DEFINITION OF "VICTIM" AS FOUND IN §16-3-110 ET SEQ. OF THE SOUTH CAROLINA CODE OF LAWS HAS ON THE COMPENSATION OF VICTIMS OF VIOLENT CRIMES. IF AMENDMENTS TO THE CODE ARE MADE, THE CRIME VICTIMS' ADVISORY BOARD SHOULD PROMULGATE REGULATIONS AS NECESSARY.

Victim/Witness Program

There is a lack of accountability in the Victim/Witness Program. This could result in the Program not meeting the objectives set by the Legislature.

Approximately \$350,000 is appropriated annually through the Attorney General's Office to fund victim/witness units located over the State, while the legislation controlling the functions of these personnel is found under the Victim/Witness program. As a result, the Program Coordinator, who is located at the Crime Victims' Fund, does not have enforcement powers to ensure that program objectives are met.

Statutes passed in 1984 provide that victim/witness units be set up in the 16 Solicitors' Offices, not to supplant existing funds, to provide specific services to victims and witnesses of crime. This means each Solicitor receives annually \$21,875 for the program. The victims' and witnesses' Bill of Rights spells out certain procedures that should be followed to provide services. For example, it is the responsibility of the unit in each Solicitor's Office to

inform the victim of the right to submit a victim impact statement and to assist the victim in completing the form. A standard form developed by the Attorney General's Office is to be used.

No formal reporting was required until 1985, when a report was required to be filed with the State annually regarding the expenditure of funds. The form developed by the Attorney General's Office does not assess compliance with the seven services outlined as the minimum specified in the Appropriation Act of 1985-86; the Act states funds may be used "only" for victims' services. Other information that would be useful to the Program, such as statistics on victim impact statements and numbers of victims served, is not requested. The Audit Council reviewed eight of the 16 forms. Some had funds carried over with no explanation. One of the forms was not completed.

Additionally, although these positions are funded with State funds, there are no minimum qualifications or salary ranges established. The Program Coordinator does not have the authority to follow-up on these matters and to ensure that services are consistently and uniformly available over the State to victims and witnesses of crime.

RECOMMENDATION

THE LEGISLATURE SHOULD CONSIDER AMENDING
THE STATUTES TO PROVIDE FOR MORE
ENFORCEMENT OF THE VICTIM/WITNESS
ASSISTANCE PROGRAM. FUNDING FOR THE
PROGRAM SHOULD BE PLACED CLOSER TO THE
PROGRAMMATIC FUNCTION.

APPENDICES

APPENDIX A

GLOSSARY

average weekly wage - average weekly earnings of the injured employee in the employment in which he was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury. Used to compute amount of weekly compensation benefit.

carrier - any company, person, or fund authorized to insure under the workers' compensation law.

claim - request for payment of money or for necessary services in accordance with the workers' compensation law, based upon the allegation of the occurrence of a work injury.

claimant - person who asserts a right to receive benefits under the provisions of workers' compensation law.

clincher - negotiated settlement agreed to by the injured employee and the employer where the claimant waives his right to additional benefits, if his condition were to worsen, and usually receives the settlement amount in a lump sum.

compensable case - a case of injury by accident arising out of, and in the course of employment which qualifies the injured worker for benefits under the workers' compensation law, including compensation for loss of earnings and medical treatment.

compensation - money allowance payable to an employee or to his dependents for loss of wages or permanent disability as provided for in the workers' compensation law.

contested case - case in which the parties involved are unable to reach an agreement on an aspect(s) of a settlement and a request is made for a hearing before the Workers' Compensation Commission to determine the matter(s) at issue.

Crime Victims' Program - program to provide aid to such persons or their dependents who have suffered disability, incurred financial hardships or become dependent upon public assistance because of having been a victim(s) of a crime.

disability - incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

docketed - case which has been placed on the docket to be heard by the Workers' Compensation Commission for adjudication.

experience period - number of years of participant's loss experience used in the calculation of the participant's loss experience modifier.

fund balance - cash on hand.

information resource management - perspective which views all information, whether manual or computerized in form, as an important organizational resource which should be managed as such.

Insolvency Fund - fund established in 1982 to ensure payment of awards of workers' compensation benefits which are unpaid because of the insolvency of employers who fail to acquire necessary coverage for employees.

loss control - services and information provided to participants in an effort to increase safety in the workplace and, therefore, reduce the risk of injury and losses.

loss experience modifier - participant's ratio of actual losses to expected losses.

loss experience rating - procedure utilizing past insurance loss experience of the participant to forecast or predict future losses:

losses - amount of benefit payments resulting from the settlement of workers' compensation claims.

lump sum - award which authorizes the immediate payment of a single sum in place of a series of smaller periodic benefit payments previously determined to be payable in the future.

medical only - injuries, usually minor, for which only medical benefits are paid.

modified premium - premium modified to reflect the occurrence of injuries in the applicable work activity and the individual employer's safety record.

National Council on Compensation Insurance (NCCI) - principal national rating organization for workers' compensation insurance. Calculates rates that its member insurers require to meet loss costs, operating and marketing expenses, plus a fair profit.

permanent total disability - the loss of, or the permanent loss of use of, any body part or function which renders the person unable to work - when the incapacity for work resulting from an injury is total.

premium - dollar amount paid for a contract of insurance.

rate - price per unit of insurance. Rate is multiplied by participant's payroll to determine the premium.

reinsurance - coverage by which one insurer insures with one or more other insurers all or a portion of the risk it has assumed under its contracts.

reserves - dollar amount set aside to meet future claims liabilities.

Second Injury Fund - agency established in 1974 to administer the Fund which reimburses employers when an employee who has a permanent physical impairment incurs a subsequent disability from injury by accident arising out of, and in the course of, his employment, and the resulting disability exceeds the amount which would have resulted from the subsequent injury alone.

self-insured - employers who do not purchase workers' compensation insurance, but provide proof of financial ability to pay directly compensation due under workers' compensation law. Two or more employers in businesses of a similar nature may enter into agreements to pool liabilities for the purpose of qualifying as self-insurers.

solvent - ability to pay all legal debts.

temporary total disability - disability where the work injury causes total disability for a temporary period, during which the injured worker receives a weekly benefit amount based on preinjury earnings, 66.67% of his average weekly wages.

third party - entity other than the employer who may be held liable for injury, loss of service, or death by the employee, his personal representative or other person.

Victim/Witness Assistance Program - program designed to provide information, training, and technical assistance to State and local agencies and groups involved in victim/witness and domestic violence assistance.

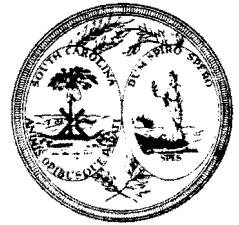
Workers' Compensation Commission - agency (South Carolina Industrial Commission until May 1986) responsible for administration and enforcement of the South Carolina Workers' Compensation laws.

State Workers' Compensation Fund

800 DUTCH SQUARE BOULEVARD
SUITE 160

Columbia, S.C. 29210

September 11, 1986



John W. Scott
Director
(803) 758-6500

Mr. George L. Schroeder, Director
Legislative Audit Council
620 NCNB Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

Having been on this job only for a short time, I cannot intelligently detail a response to the numerous matters raised in the final report.

The key staff members here have reviewed it and have generally a positive reaction to most recommendations.

We accept the final report as a valuable management critique and tool. We will, in the coming weeks and months thoroughly review the issues raised and implement those recommendations which are within our control and which we find valid and feasible. In our follow-up responses we will point out areas of disagreement, if any.

I do have three general observations:

- 1) An Actuary will be employed as soon as the bid process can be completed, to audit the Fund. That will answer questions about solvency and update our rate making process. I have seen nothing so far to convince me that the Fund is in any immediate danger of insolvency. I am confident that with an actuarial review and update we can assure long term solvency.
- 2) Investment income is a very significant factor in the rate making and solvency issues raised by the report. I believe the report should deal with that matter more thoroughly than it does. Any resolution of the solvency-rate making questions will require a review of the investment income application.
- 3) In general we disagree that a "governing board to oversee State Fund operations" would resolve any of the management deficiencies noted in the report.

Mr. George L. Schroeder
Page Two
September 11, 1986

By and large the decisions made in this Agency are executive decisions requiring prompt action and indepth technical familiarity with the particular issue: e.g. whether or when to settle or contest a claim or pay a medical bill, or hire or promote an employee. We make no regulations or broad policy decisions of a quasi-legislative or judicial nature where "representative" input might be helpful.


A Director, who has administrative experience and competence, who has a sense of fairness and the integrity and intestinal fortitude to make decisions based upon what is right, fair and legal, is all that an agency of this type needs.

Direct appointment by the Governor, with confirmation requirement, is the best way to assure that the Director possesses those traits since the Governor's own reputation and political stock is affected by the quality of decisions made by his or her appointees.

I hope this response is useful. If I can be of further assistance or if you need anything further from me or the staff please let me know.

Sincerely,

STATE WORKERS' COMPENSATION FUND



Irvin D. Parker
Acting Director

IDP/se